Supreme Court, U.S.
FILED

(1)

CASE NO. 97-1757 APR 20 1998

OFFICE OF THE CLERK

THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1997

LAWRENCE MOORE,

Petitioner,

v.

JUDITH KEEP; RUDI BREWSTER; ROBERTA WESTDAL; DARYL CHIANG; HILLYER & IRWIN; NORMAN ALLENBY; STEVE SAYLER; KISSANE & COOK; MATTHEW KISSANE; MELISSA COOK; LEVY GOLDMAN & LEVY, LEWIS LEVY,

Respondents.

PETITION FOR
WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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168 pp

QUESTIONS PRESENTED FOR REVIEW

1. Can a circuit court ignore an ERISA beneficiary/plaintiff's appeal of a biased district judge's impositions of ostensible bonds for "costs" (over $210,000) - actually meant to prevent his access to the federal court - to dismiss: an appeal of dismissal of his suit to enforce jury verdicts against thieving Union/ERISA trustees; and his appeal of malicious, fraudulent, sanctions of $46,500 (disguised as an ERISA award to evade F.R.Civ.P. 11 limits)?

2. Can that biased judge grab jurisdiction over other lawsuits (including one against him), nominally recuse but write all orders dismissing them, order plaintiff to post more bonds for "costs on appeal" to limit appeals, continue secret contacts with defendants, receive non-parties' "opposition" to the order releasing registry funds (after plaintiff won the final appeal and properly applied for the order), orally instruct the court Clerk to not release the funds, and together with the nominal judge, lie non-parties had "liens," and instead disburse the funds to them?

3. Can that same judge sanction a plaintiff for moving to add claims against defendants who provided in a collective bargaining agreement for illegal attorney fees awards against him, refuse to reconsider that sanction ($512 vacated on appeal) on remand after the judge's validation of that provision was reversed on appeal, and order the same sanction again in violation of F.R.Civ.P. 11?

4. Can a judge conspire with lawyers for a corrupt, debarred defense contractor (sued for racketeering with Union Defendants to evade debarments) to steal Petitioner's registry funds, refuse to order funds returned after that seizure was vacated on appeal, and instead steal the funds again, and legal interest, with an *ex post facto* "Stipulation" letting the contractor transfer the funds to the Defendants he won those funds from as final judgments?

5. Can the same judge who stole a prevailing plaintiff's funds after judgments were final on appeal - by hiding his applications for release of registry funds; holding hearings without jurisdiction (the case was final) or notice (the Defendants, their lawyers, non-

parties, and that contractor were noticed); creating *ex post facto* judgments; lying they had liens; and disbursing his funds to them - conspire with the same lawyers again after one malicious award of attorneys fees ($244,000) is vacated, but appeal of another is fraudulently dismissed ($46,500 plus 10% interest) and, after jury verdicts for plaintiff are final on appeal again in a second case, repeat the same scenario to disburse the funds to the same losing Union defendants (this time using their dual roles in Union trusts) the contractor, and non-parties, and again steal his legal interest?

6. Can district judges who had dismissed a suit for damages caused by the $244,000 fees award conspire again, after the court of appeals over-ruled their two orders validating such an illegal fees award - pursuant to an illegal CBA provision - and reversed their dismissal of the suit for damages, to forum-shop for a new panel on appeal which would reverse the original panel by lying, as they had, that orders validating that illegal fees award had not been over-ruled on the first appeal (the Fischbach/Union/NECA Defendants in the suit for damages had put that illegal provision in their CBA to permit their joint "grievance committee") to make the $244,000 attorneys fees award against plaintiff as part of a plan to extort him to forego appeals of judicial misdeeds?

7. Are two district court judges, one judge's law clerk, and the district court Clerk "immune" from suit for violating the Fifth Amendment by acting under color of that authority to nullify jury verdicts and steal a citizen's property without jurisdiction, or any case or controversy, after he sued them?

8. Are lawyers and their law firms able to be sued in district court as officers of that court for conspiring with the two judges, the law clerk, and district court Clerk to violate Plaintiff's Fifth Amendment right to enjoy his property?

LIST OF ALL PARTIES

Petitioner/Appellant/Plaintiff Lawrence Moore, and

Respondents/Appellees/Defendants: International Brotherhood of Electrical Workers; J.J. Barry; Charles Pillard; S.R. McCann; Richard Robbins; Int'l Broth. of Elec. Wkrs Local 569; Al Shur; Jim Westfall; Joe Heisler; Jim Aylsworth; Tom Pridemore; Keith Widdop; Paul Blackwood; Bob Flowers; Wayne Lovin; Bob Riel; Kris Hartnett; Charles Wilder; George Scott; Dick Smith; Terry Godshalk; George England; Richard White; John Simpson; Steve Workman; Don Withem; Mike Reilly; Jim Brandon; Chet Holm; Ray Altmeyer; Sharon Hahn; Gary Degener; Chancy Tyler; Bud Hahn; Tom Boulter; Mike Degener; John Manion; Wally Gauntt; Gary Degener; Nat'l Electrical Contractors Ass'n; Ron Cooper; Joe Mansolillo; Dave Raspolich; Jim Fuller; San Diego Electrical Pension Trust; San Diego Elec. Health and Welfare Trust; San Diego Electrical Training Trust; Labor Management Cooperative Fund; San Diego Electrical Industry Education and Manpower Development Trust; Ken Stuart; Dave Alison; Wilmer Bass; Jack Zwart; Wayne Van Derlinden; Mike Sparks; Baker Electric, Inc., Atkinson Mechanical Contractor, Inc.; Fischbach & Moore, Inc.; Rudi M. Brewster; Judith Keep; Daryl Chiang; Roberta Westdal; Levy, Goldman & Levy, Lewis Levy; Jennifer Messersmith; Hillyer & Irwin; Norman Allenby; Steven Sayler; Craig Brown; Kissane & Cook; Matthew Kissane, and Melisssa Cook.

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I. This petition should be granted because district and appeal court judges colluded to knock Petitioner out of court (with lies that he unreasonably and vexatiously multiplied proceedings, and voluntarily dismissed D.C.# 91-1543, and with collusion to place bond-conditions on his rights of access to both courts, to award $46,500 attorney fees (plus 10% interest) to ERISA Trusts whose trustees he already had jury verdicts and judgments against, and to steal the jury verdicts and bonds he did post), and to dismiss both the case-in-chief (on grounds he could not post a $200,000 bond), and *bona fide* appeals filed by this ERISA beneficiary . 23

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II. This petition should be granted because vindictive district court judges, who refused to recuse from Petitioner's cases, stole a $500 costs bond posted on appeal from their first dismissal of D.C. # 93-1857 - which he filed against ERISA Trust trustees in 91-1543 who conspired with a judge to illegally award $244,000 attorney fees against him - after that dismissal was reversed, by lying the Trusts parties in 91-1543 were "defendants" in 93-1857, and by lying the ERISA Trusts had filed a lien in 93-1857 25

III. This petition should be granted because the vindictive judge who imposed $512.50 D.C.# 87-0172 sanctions against Petitioner for challenging an illegal CBA provision which the judge held to be "valid and applicable" to him for a $244,000 fees award (and re-imposed the sanction even after the appeal court overruled him and held the provision was illegal) again wouldn't issue "findings of fact" on remand ($7,000 (87-0172) and $207,000 (91-1543) in bonds (to proceed) and $46,500 attorney fees also imposed) . 25

IV. This petition should be granted because that judge conspired with Fischbach's Hillyer & Irwin lawyers to steal the Petitioner's registry funds after 85-1719 was final, would not return the funds disbursed to Fischbach after his theft was reversed on appeal, and instead stole those funds again, and also stole the interest, with an *ex post facto* "Stipulation" letting Fischbach transfer the funds to Kissane & Cook, who aided and abetted the first theft 26

V. This petition should be granted because the same judge - who had stolen Petitioner's registry funds after 85-1719 was final on appeal by deliberately not filing his 28 U.S.C. § 2042 application for an Order releasing the funds, by conspiring to give Hillyer & Irwin lawyers, Kissane & Cook lawyers, lawyers for losing union Defendants, and other lawyers phony *ex post facto* judgments and liens, and then disburse those funds to them - has repeated that same scenario to steal his funds again after the appeal court had reversed the judge's first disbursal from the federal registry to Hillyer & Irwin client Fischbach & Moore, Inc,, and also again ignored the relevant law to steal even his legal interest 27

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VI. This petition should be granted because vindictive district court judges, whose dismissal of D.C.# 93-1857 was reversed on appeal, then forum-shopped for another appeal panel, dismissed the case again on the same *res judicata* grounds that were already reversed, and that new panel lied, as they had, that overturning of the order validating the CBA provision (permitting an attorney fees award of $244,000 against Petitioner) did not affect the *res judicata* effect of the overruled order 28

VII. This petition should be granted because district judges have arbitrarily, capriciously, maliciously and fraudulently stolen the Petitioner's property without jurisdiction, and have intimidated or conspired with other court personnel to cover up those illegal acts by acting under the color of their authority as federal judges and court employees in violation of federal and state statutes, and the rules of the courts, which have the authority of statutes 30

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CITATIONS TO OPINIONS BELOW

There were no circuit court opinions published below in these Appeal Nos. 95-55495 (D.C. 91-1543-B), 95-56701 (93-1857-K), 96-55629 (87-0172-B), 96-55971 (85-1719-B), 96-55980 (87-0172), 96-56248 (93-1857-K), and 97-55470 (96-1736-G).

STATEMENT OF JURISDICTIONAL GROUNDS

Jurisdiction over the case was proper in the district court under 28 U.S.C. §§ 1331, 1337 and 1343. The circuit court's jurisdiction to review orders of the district court was proper under 28 U.S.C. § 1291. This Court has jurisdiction to hear this matter under 29 U.S.C. § 1254 (1) and Supreme Court Rule 10.

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STATEMENT OF THE UNDERLYING CASES

Petitioner won jury verdicts of $66,200, and $5,300 in costs against Local 569 of Int'l Broth. of Elec. Workers and two of its officers in December, 1989 (for blacklisting from jobs, assaults (with guns), battery, and violating Labor-Management Reporting and Disclosure Act ("LMRDA") rights (29 U.S.C. 411)).

Judge Brewster refused to allow either complicit employer "Baker Electric, Inc.," whose owner was the San Diego president of the National Electrical Contractors Association ("NECA"), the International Union ("IBEW") and officers, or the most complicit "Local 569" officers (Blackwood, Pridemore, Westfall and Lovin who "managed" that Union) be tried. Both injunctive relief and attorney fees, provided for by the LMRDA, were denied.

Union Defendants began more vehement assaults, batteries and blacklisting after 85-1719-B was filed, and brought Petitioner before Local 569 "Trial Boards" stacked with 21 officers he filed internal union charges against for stealing Local 569 funds to buy themselves golden parachute pensions. Brewster set aside one of the rigged "trial board" decisions but again rejected all injunctive relief requests, and would not set aside a second union trial board decision on those same trumped-up charges, enabling Defendants to fine and suspend him. Defendants had also removed Petitioner from the job eligibility list, and contacted all other IBEW Local Unions in Southern California and Nevada to successfully extend their blacklisting of him.

Petitioner then filed D.C. 87-0172-B to remedy the wrongs, and added Fischbach & Moore, Inc. after it fired him to hide its 1985-89 racketeering with Dynalectric, Inc., IBEW (nationally), and Local 569 in San Diego to evade its debarments from bidding or working on any federal jobs. Fischbach had used 14 "puppet" companies to fraudulently continue to bid and to work the federal jobs it otherwise could not legally bid or work. Both the IBEW and Local 569 helped Fischbach back-door Union workers to the "puppets" in violation of their collective bargaining agreement ("CBA"). Dynalectric, Inc., also debarred for bid-rigging in five other States with Fischbach, lost almost $560 million in the first year of its federal debarments. Brewster would not let Petitioner add Dynalectric Inc. as a defendant, and stymied all his attempts at discovery from that much-larger Fischbach conglomerate.

Fischbach needed compliant union officers, and financed both campaigns by Local 569's incumbent Blackwood (through one of its out-of-state "puppets"), and one of its San Diego supervisors in Local 569's 1986 business manager elections, and illegally donated hundreds of pension-credit payments into its eventually-victorious high-level supervisor's personal "San Diego Electrical Pension Trust" account to ensure continued racketeering.

Immediately after Petitioner won the jury verdicts in 85-1719 Brewster awarded Union officers $7,000 attorney fees in 87-0172 by lying union "officers" could not be sued under LMRDA § 501 (29 U.S.C. 501) and ordered him to post a bond. Brewster, who had been a senior partner in San Diego's largest law firm which specialized in representing corrupt defense contractors prior to his appointment to the federal bench, was openly colluding with Fischbach's lawyer Allenby, a senior partner in Hillyer & Irwin, San Diego's second-biggest such law firm, and their strategy was the same as the Union Defendants: to starve the Petitioner out.

Local 569 officers Blackwood, Westfall, and Pridemore then convened another union Trial Board based on Brewster's finding that union officers couldn't be sued under the LMRDA, charging Petitioner with wronging them by filing 85-1719-B, and winning. Petitioner was fined $6,000 and expelled from Local 569 and the IBEW, and he amended 87-0172 to cover that latest travesty (Brewster had refused to consolidate the cases).

Petitioner won jury verdicts of $112,000, and $11,000 in costs and $18,000 in attorneys fees in 87-0172 against Local 569 in August, 1991, despite Brewster's advocacy for the Defendants, and his absolute refusals to let Fischbach even come to trial.[1]

The jury found 21 Local 569 officers breached their fiduciary

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[1] Local 569 Defendants already appealed jury verdicts and judgment for Petitioner in 85-1719, and had been permitted to post an inadequate $70,000 supersedeas bond. Brewster was the most effective advocate in the courtroom for the IBEW Defendants in that case.

Presiding judge Brewster was again the most effective advocate for Defendants at trial in 87-0172, and his outrageous duplicity and refusal to let Fischbach even come to trial was the subject of Cross-Petition for Writ of Certiorari No. 95-1020. His less zealous, but effective, advocacy on Union Defendants' behalf was shown in Case No. 94-439.

duties by stealing Union funds for golden parachute pensions.

Petitioner won the LMRDA cause of action on Union officers fining, suspending and expelling him, and the Union was ordered to reinstate him as of the expulsion date, but on his return to the October, 1991 Local 569 Union meeting the same Union officers again threatened to kill him. He then filed D.C. # 91-1543-B for those new violations of his LMRDA rights, and assaults, but did not immediately serve that new Complaint. Petitioner also asked Brewster to order those officers to repay stolen Union money and to use his ancillary jurisdiction to modify their inflated pensions.

Union Defendants again filed motions for judgment n.o.v. for all damage awards for blacklisting Petitioner from jobs, violating his LMRDA rights, and for the jury decision that 21 officers had violated their fiduciary duties. All such motions were denied and the Union Defendants filed another notice of appeal, but this time they posted an almost adequate supersedeas bond.

Fischbach, however, filed a motion for attorneys' fees, citing § 1.06 of its CBA with Local 569 as authority for such an award. Petitioner was not even aware that such a CBA provision existed. Ironically, he prevailed on Union officers' motions for summary judgment on claims that they implemented a 1988 CBA without the third party beneficiaries' approval (as required by the IBEW constitution), but *in limine* Brewster announced arbitrarily he would not give that claim, and some others, to the jury.

The 1991 CBA between Fischbach and Local 569 contained § 1.06 on which Fischbach based its attorney fees motion, and it was very clear that both those parties and their lawyers were all colluding to have Brewster make a first-time-ever award against the third party beneficiary Petitioner. Brewster held in February, 1992 that Fischbach's lawyers must first get the fees award from a CBA Labor-Management Committee which heard "grievances," and the Union began notifying Petitioner of hearing dates.

Fischbach's Hillyer & Irwin lawyer Craig Brown brought its fees motion back to Brewster in June, 1992 on grounds Petitioner refused to participate in scheduled Labor-Management Committee hearings, and on grounds Petitioner would sue them if they made any such fee award. Brewster then ordered Brown, Allenby, and the Committee to make the fees award against the Petitioner even if he did not appear, and told them that any fees award made by

that Committee would be confirmed by him.

After that outrageous hearing Brown followed Petitioner out of the court and told him Brewster would give Fischbach and the Unions all of the money awarded by the two juries if he refused to withdraw his appeal of Fischbach's 87-0172 escape from trial. Brown was replaced by Steve Sayler, who repeated those threats, as did Allenby and a Fischbach lawyer from New York.

Petitioner had timely filed and served an Amended Complaint in 91-1543-B after Brewster had refused to order Union officers to repay the Union money they stole, and refused to exercise his ancillary jurisdiction to modify their inflated Pension accounts. That 91-1543 Amended Complaint added claims against Union and NECA Pension Trust trustees who approved Union officers' illegal padding of their pension benefits, against the Health and Welfare Trust trustees who approved similar thefts, against other Training Trust trustees who approved similar thefts of its money to also inflate their personal Pension Trust accounts, and against all trustees for prohibited transactions by parties in interest in violation of ERISA (29 U.S.C. 1132 *et seq.*). Union "trustees" were those same 87-0172 Union officers who stole Union funds.

In July, 1992 Petitioner ran for Local 569 business manager in its election of officers, won the first round of voting, but was assaulted and battered on run-off election day on the Union Hall steps by a member who represented himself to be an agent of the Training Trust. In August, 1992 Petitioner moved to amend the 91-1543 Complaint again to include both that latest assault and battery, and a declaratory relief claim against the Union-NECA-Fischbach parties who included illegal § 1.06 in their 1991 CBA.

During the interim the Union-NECA-Fischbach parties had held yet another joint "Labor-Management Committee" hearing in August on Fischbach's attorneys fees motion, and were again rejected. Petitioner still had not suffered any money damages.

In September, 1992 Brewster denied Petitioner's motion to amend 91-1543, including the motion to add a cause of action for declaratory relief that CBA § 1.06 violated LMRDA § 101(a)(4). Brewster also dismissed the claims for assaults and batteries and violations of his LMRDA rights in October, 1991 by lying those claims had been litigated in 87-0172, and ordered Petitioner to post a $200,000 bond before proceeding with the ERISA claims.

In November, 1992 a hand-picked joint "Labor-Management Committee" made up exclusively of 91-1543 ERISA Defendants met secretly with Fischbach's Hillyer & Irwin lawyers, Local 569's Levy, Goldman & Levy lawyers, and Trusts' and NECA's Kissane & Cook lawyers (no notice to Petitioner), and awarded $244,000 attorneys fees to Fischbach and against Petitioner.

In December, 1993 Petitioner (whose jury verdicts awards, costs and interest in 85-1719 and 87-0172 approximated almost exactly $244,000) submitted an affidavit that he could not post the 91-1543 $200,000 bond. Brewster then dismissed the case, Petitioner filed Appeal No. 93-55287, and Brewster imposed a $5,000 bond condition on that appeal (later reduced to $1,000).

Fischbach's Hillyer & Irwin lawyers then moved to confirm that $244,000 attorneys fees award against Petitioner, Brewster did confirm it, and filed an 87-0172 order on June 14, 1993.

Brewster held in 91-1543 that Petitioner could not amend to add the claim for including illegal § 1.06 on grounds that motion should have been made in 87-0172 (already final), Petitioner then moved to recall 87-0172 from appeal and add a declaratory relief claim against Defendants for approving inclusion of § 1.06 into their CBA. Brewster denied that motion, held it should not have been made, and sanctioned Petitioner $512.50, paid to Fischbach.

Petitioner then filed motions to amend, alter and vacate the two awards in 87-0172. Brewster scheduled a November 1, 1993 hearing on those motions. Brewster also awarded attorneys fees to those Union, Fischbach and NECA Defendants in 91-1543 for opposing Petitioner's August, 1992 motion to amend by adding the claim for putting § 1.06 to their 1991 CBA (Brewster laughed at one hearing that § 1.06, "might as well have Mr. Moore's name on it."). Petitioner had also appealed the 91-1543 awards.

On September 16, 1993 the ninth circuit filed a final mandate denying Union Defendants' appeals from jury verdicts and costs awards to Petitioner in 85-1719, making them final. There were no liens, writs or final judgments which could prevent release of that $70,000 Union Defendants posted as a bond in March, 1990, and Petitioner concurrently delivered an *ex parte* application to district court for release of the funds as per 28 U.S.C. § 2042.

Although 85-1719 was not remanded to the district court, and was final on appeal September 16, 1993, the Union Defendants

in 85-1719, Fischbach (Defendant only in 87-0172 and 91-1543), and 91-1543 NECA Defendants served "Oppositions" to release of Petitioner's money (without standing to do so).

On September 27, 1993 Brewster's law clerk told Petitioner - in a telephone call related to pending motions to vacate, alter, or amend those 87-0172 awards of attorneys fees to Fischbach - that she discussed whether the 85-1719 funds could be released to him with Fischbach's Hillyer & Irwin lawyers.

On November 1, 1993 Plaintiff arrived in Brewster's court for a hearing on his motions to amend, alter and vacate the two 87-0172 fee awards to Fischbach's lawyers. Also present in court was Local 569's lawyer Levy, the IBEW lawyer Messersmith and the ERISA Trusts/NECA Defendants' Kissane & Cook lawyers.

Brewster quickly denied the 87-0172 motions, but then held a dialogue with the other lawyers wherein they all lied that their clients had liens filed in 85-1719. After two hours of objections to that unnoticed, prejudicial hearing on Petitioner's registry funds (where no one present had any standing or jurisdiction) and Petitioner's oral request that Brewster recuse himself from all matters concerning him, Brewster stated that he would send an order to the Clerk of Court releasing all registry funds from 85-1719 that day (but changed it to the next day to give Fischbach's lawyers time to file an emergency motion with the ninth circuit).

The next day the Clerk refused to release the funds, Brewster filed an order setting another hearing on release of the funds, and Fischbach's lawyers accidentally sent Plaintiff a copy of a letter to Brewster thanking him for telephoning - after hours - to assure them the Petitioner's registry funds would not be released to him. Lawyers for Fischbach, IBEW, Local 569, NECA, Plaintiff and all comers then filed specious, *ex post facto* notices of liens.[2]

Petitioner then filed petitions for writs of mandamus asking the ninth circuit to order judge Brewster to release his registry

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[2] Petitioner's former lawyer George de la Flor had represented him in 1985-86, but Flor constantly abused illegal drugs in his office, was sanctioned for inability to meet filing deadlines in another matter, and withdrew from 85-1719 and 87-0172. Flor later admitted that he and the Levy, Goldman & Levy lawyers (at least one of them also had an ongoing problem with drugs) cooperated to the Petitioner's detriment.

property (85-1719), to stop imposing bond conditions on his right to sue (91-1543), and to recuse himself from Petitioner's cases. Ninth circuit chief judge J.C. Wallace (Brewster's patron), and his sycophant, circuit judge Farris, rejected those petitions.

Brewster held more kangaroo court "hearings" in December, 1993 and January, 1994, ordered Petitioner's registry funds from 85-1719 disbursed to all comers, and even cheated him out of the Federal Courts Improvement Act (28 U.S.C. § 1291) interest rate on his judgments by arbitrarily assigning a rate of 6% to him and all other awardees (a 1989 T-Bill rate for Petitioner's judgments was higher and compounded annually. Lower rates were not due on the December 15, 1993 awards). Petitioner again appealed.

Petitioner also examined the district court docket sheet and found Brewster hadn't even filed Petitioner's September 16, 1993 28 U.S.C. § 2042 application for release of his property, moved to correct the civil docket, and Brewster refused to file it as of the September 16, 1993 date, but filed it as of October 27, 1993.

Petitioner filed D.C. # 93-1857-K against Fischbach, IBEW, Union, NECA and lawyer parties who made that illegal $244,000 attorneys fees award against him, and filed D.C.# 94-02 against Brewster, his law clerk, the clerk of the district court, and those same parties and their lawyers for conspiring, without jurisdiction or standing, to steal his unencumbered federal registry property.

D.C. ## 93-1857 and 94-02 were assigned to district judges Rhoades and Keep respectively, but Brewster grabbed both cases. Petitioner again moved to recuse Brewster, but 94-02 was given to Rhoades and 93-1857 to Keep and they refused to re-assign the cases as originally, randomly assigned under the Local Rules' "low number rule." Keep dismissed 93-1857 by having the Clerk of Court file a judgment, but the three voluminous 94-02 orders granting summary judgment to judicial defendants and lawyers in 94-02 were obviously written by Brewster, not Rhoades.[3]

A "Not for Publication" Memorandum by circuit judge Farris was filed in Appeal No. 93-55287 (from 91-1543) June 10, 1994, which lied: Petitioner "voluntarily dismissed" the suit; Brewster

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[3] Brewster and Rhoades were nominated for the federal bench in 1984 at the same time senator Pete Wilson also nominated Ed Meese (Brewster was Meese's San Diego lawyer) for U.S. attorney general.

held his ERISA claims were filed in earlier cases, unreasonable, and vexatious; that the appellate court had no jurisdiction because Plaintiff appealed from the final order and not imposition of the $200,000 bond; and that cited ERISA cases provided for attorney fees awards against ERISA beneficiaries. Petitioner filed Petition for Writ of Certiorari No. 94-556 from those lies about the facts, and relevant law. That case was also remanded back to Brewster for another award of attorney fees on appeal against Petitioner.[4]

On August 2, 1994 Wallace and Farris affirmed Brewster's outrageous abuses of law to let Fischbach and Union racketeers escape from trial in 87-0172, but also affirmed Petitioner's jury verdicts and costs awards. After the final mandate on appeal was filed Petitioner again applied for orders, as per 28 U.S.C § 2042, to release his registry funds filed as supersedeas bonds by Union Defendants. Because that jury verdict that 21 Local 569 officers breached fiduciary duties by stealing Union money to inflate their personal "golden parachute" Pension Trust accounts was affirmed he also applied for release of $7,000 Brewster forced him to post to allow the claim to proceed. Brewster ignored the applications.

On October 17, 1994 Brewster refused again to recuse from all matters involving Petitioner, and to answer whether he held that 91-1543 ERISA claims were filed before, or were frivolous or vexatious, on grounds Farris had made that finding on appeal. The Pension and Health Trusts' Kissane & Cook lawyers lied that the Training Trust was also an ERISA Trust entitled to fees, and submitted fraudulent billing statements (both as to hours and billing rates) for over $36,000 fees, and asked Brewster for $10,500 additional for submitting Appeal No. 93-55287 billing.

Brewster awarded Kissane & Cook lawyers the full $46,500 fees by lying they were appellate costs, and threatened to award more fees against Petitioner if he appealed that 91-1543 $46,500 award. The ninth circuit also awarded ERISA Trust Defendants $93.00 appeal costs, Petitioner applied for the remainder of his

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[4] Farris' appeal memorandum abused the collateral order doctrine and California's "vexatious litigant" statute (no appeal lies from the order imposing bonds), and dishonestly cited cases which held fees may not be awarded against an ERISA plaintiff as authority for his remand for fees. Petitioner believes Wallace really authored the memorandum.

$1,000 costs bond, and Brewster also lied that they had a writ of attachment against the $907 costs bond remainder based on that same-day $46,500 fees award.

Petitioner appealed the $46,500 fees award but Brewster then disbursed the $907 to Defendants despite the Petitioner's timely appeal, again cheating Petitioner out of interest on that $1,000 appeal costs bond, then ordered him to post a new $2,000 bond on appeal (in the face of a $93.00 costs award in the much larger appeal of dismissal on the merits), and refused to apply the remainder of the original $907 plus interest appeal costs bond.[5]

On May 5 and 8, 1995 the circuit court vacated Brewster's illegal 87-0172 $244,000 (and $512.50) attorney fees awards to Fischbach, reversed Keep's dismissal of 93-1857 (filed against the Fischbach, Union, NECA, Hillyer & Irwin, Kissane & Cook and Levy, Goldman & Levy Defendants who had colluded to first make that illegal award), and reversed Brewster's disbursal of $60,490 from Petitioner's registry funds to Fischbach after 85-1719 jury verdicts were final on appeal on September 16, 1993.

However, ninth circuit chief judge Wallace - he was too busy protecting Pete Wilson (then challenging an injunction, given to disadvantaged, undocumented children, staying implementation of California Proposition 187) to interfere in those three appeals - stalled filing of the circuit court's final mandates for months, Brewster refused to order Fischbach to repay the money by lying its Petition for Writ of Certiorari No. 95-485 stayed the finality of the appeal court's decisions (Petitioner filed Cross-Petition for Writ of Certiorari Case No. 95-1020), and it was never repaid.

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[5] Farris dishonestly cited *Perkins v. Standard Oil Co.*, 90 S.Ct. 1989 (1970) as authority for the $46,500 fees award against Plaintiff, who sued trustees the 87-0172 jury held stole union funds to inflate their personal Pension Trust accounts, and who in bad faith inflated disproportionate pay-outs from the common Trust assets. *See Hummell v. S.E. Rykoff & Co.*, 634 F.2d 446, 456 (9th Cir. 1980) (establishing criteria for such fees awards); *Nachwalter v. Christie*, 805 F.2d 956, 961 (11th Cir. 1986); *Sokol v. Bernstein*, 812 F.2d 559, 560 (9th Cir. 1987) (no attorney fees awards against ERISA plaintiffs).

Brewster and Defendants knew Petitioner was still blacklisted from working because of Brewster's refusals to give him injunctive relief.

STATEMENT OF THE CASES IN DISTRICT COURT
D.C. # 91-1543-B

The appellate court lied in denying Appeal No. 93-55287: that the Petitioner had "voluntarily dismissed" 91-1543-B; that it lacked jurisdiction over Plaintiff's appeal from the final order - dismissing the case because he could not post a $200,000 bond - because he did not appeal from the interlocutory order imposing that $200,000 bond; that he "filed complaints against the Trust Funds that raised vague and conclusory allegations that had been litigated in his earlier suits"; that the district court found he had "unreasonably and vexatiously multiplied the proceedings in this [Trust Funds] matter"; and that precedent it cited supported an award of attorneys fees on appeal against this ERISA participant/ Plaintiff/Petitioner. It remanded to the same biased, virulently dishonest judge Brewster who had lied to Petitioner, and stole his 85-1719 funds, and who he had asked to recuse many times.

On remand Brewster demonstrated his duplicity by refusing to answer Petitioner's direct question whether he had ever made the findings that Appeal No. 93-55287 judge Farris relied on (lawyer Kissane advised him to not answer to limit the record on appeal). Brewster awarded not only the full $36,000 in fees Kissane lied were incurred to oppose that appeal, but added an extra $10,500 Kissane requested for presenting fraudulent billing statements to him (not provided for in Farris' Memorandum), and refused to issue findings of fact, and also threatened even more awards if Petitioner appealed his November 17, 1994 $46,500 fees award (Appendix ("Appx") at 44-54).

When Petitioner did appeal Brewster acknowledged Kissane's slurs he had no assets, and was "indigent," and granted Kissane's motion to make him post a new $2,000 bond for ostensible costs on appeal without giving him normal time to oppose.[6] Brewster again refused to apply the $907 remaining from the cost bond Brewster forced him to post in the original appeal of dismissal, and "stayed" that new Appeal No. 95-55046 until it was posted.

Petitioner filed Appeal No. 95-55495 from imposition of that third bond for $2,000, and from that stay.

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[6] In fact Petitioner had $150,000, plus 28 USCA § 1961 interest, in the federal registry which should have been released August 4, 1994.

When the circuit court's decision in Appeal No. 94-55876 reversing Keep's dismissal of 93-1857 was final June 30, 1995, Petitioner filed a 28 U.S.C. § 2042 application in district court for an order releasing his unencumbered $500, plus interest, from the court registry which Keep ordered posted to appeal that case.

The Order was filed, but Kissane & Cook lawyers telephoned Brewster's chambers, delivered an *ex post facto* "Opposition" to Petitioner's application for release of his property to Brewster (not Keep), Brewster then called Keep's law clerk Chiang, and told him to not release Petitioner's property, that law clerk telephoned the Clerk of court's office, and the Clerk then refused to release the Petitioner's registry property (plus interest) pursuant to the Order, despite the fact that there was no lien filed in the civil docket as per State law.[7] (See Appx 57-68)

Keep then filed an order lying that Kissane & Cook's ERISA non-party Trusts clients (fraudulently included the Training Trust) filed a lien on the action (ostensibly based on Brewster's $46,500 91-1543 fees award), lied they could execute on that non-existent lien, ordered Petitioner's property disbursed to them, demonized Petitioner, restricted him from telephone contacts with the court (but didn't restrict Kissane & Cook, their non-party Trust clients, or Defendants), ignored earlier threats of sanctions if dismissal was appealed, earlier Brewster/Keep collusion to grab control over this case (assigned to judge Rhoades by the Local Rules), and also excused collusion with Brewster to steal that $500, and again refused to recuse. Petitioner filed Appeal No. 95-56701.

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[7] The district court never had *in rem* jurisdiction over the Registry funds, the *res*, while it had jurisdiction over the case either before or after Petitioner won the appeal because it was deposited by him as a bond for costs on appeal after filing a notice of appeal.

In the absence of power to arrest the *res*, no decree *in rem* could be rendered against the *res*. *Alyeska Pipeline Service Co. v. Vessel Bay Ridge*, 703 F.2d 381 (9th Cir. 1983). It is axiomatic that *in rem* jurisdiction exists only where the subject matter of the action, the *res*, is within the jurisdiction of the court. *American Bank of Wage Cl., v. Registry of Dist. Ct. of Guam*, 431 F.2d 1215 (9th Cir. 1970); 4C Wright & Miller, *Federal Practice and Procedure* § 1070, 270 (1969).

Brewster sanctioned Petitioner for moving to add the claim against those who put § 1.06 in the CBA but referred the amount of attorney fees to the magistrate, who awarded $1,005 total to be split by all parties. Brewster then reversed, sanctioned the Petitioner $2,201 (awarded to Fischbach), and $1,005 (awarded to Local 569, IBEW and NECA) for trying to add the claim (that CBA § 1.06 was illegal) to 91-1543, and held that motion should have been brought in 87-0172 (Appx 41-43).

But when he moved to recall 87-0172 from appeal to permit him to add the cause of action there against those who included § 1.06 in the CBA between Local 569, Fischbach and NECA, he was sanctioned another $512.50 by Brewster, who held § 1.06 was "valid" and "applicable" to him (Appx 70-72).

Petitioner provided the law for such a motion, Fischbach never filed any separate motion for the fees, and judge Brewster hated the LMRDA (prohibiting such limits on union members' right to sue) as much as the president of the Int'l Bro. of Elect. Workers. *See Parks v. International Brotherhood of Electrical Wkrs.*, 314 F.2d 886, 925 (4th Cir. 1965). Brewster also noted that CBA § 1.06 **"specifically identified"** Petitioner.

The appeal court held § 1.06 violated the law, and was not applicable, vacated the $244,000 award and remanded Brewster's award of Rule 11 sanctions. *See Moore v. Local 569 of Intern. Broth. of Elec. Workers*, 53 F.3d 1054, 1058 (9th Cir. 1995).

While sanctions were *mandatory* under the 1983 version of Rule 11 the 1993 version provided that the court *may* impose such sanctions. The decision to do so should be reviewed under an abuse of discretion standard. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990) (all Rule 11 determinations are reviewed under an abuse of discretion standard).

But on remand Brewster vindictively and summarily imposed the same sanctions, and, as with the first-time award, did not issue an order to show cause why he should exercise discretion, and again refused to make findings of fact or legal conclusions which would describe the basis for such sanctions, or offending conduct by Petitioner. It was clear that Brewster's bias increased to something less objective, and Appeal No. 96-55629 was filed.

When the appeals court issued its final mandate denying the Union Defendants' appeals from jury verdicts, Petitioner applied for release of registry funds they posted as a supersedeas bond. Finality is achieved in the Ninth Circuit when the appeal mandate is filed. *U.S. v. Rivera*, 844 F.2d 916 (2d Cir. 1988). Brewster conspired with Fischbach's Hillyer & Irwin lawyers to extort him to not appeal Fischbach and Unions escapes from 87-0172 claims for racketeering, and did not allow that application to filed.

On November 1, 1993 Petitioner was ambushed in Brewster's court by Hillyer & Irwin lawyers for Fischbach (a defendant in 87-0172 and 91-1543, Levy, Goldman & Levy lawyers for Local 569 Defendants (in 85-1719, 87-0172 and 91-1543), the IBEW's lawyer Messersmith, and Kissane & Cook lawyers for the Union Trusts and NECA Defendants in 91-1543). At that hearing on Plaintiff's motions to alter, amend and vacate Brewster's awards of $244,000 and$ 512,50 attorney fees to Fischbach in 87-0172, Messersmith admitted on the record Brewster's law clerk told her they would be able to oppose Petitioner's application for release of $70,000 registry funds plus interest. Brewster set the stage for such abuses by awarding $244,000 to Fischbach, putting three case numbers on all his orders, and advising Defendants to also put three cases on their filed documents to create false "standing" for the non-parties to appear in 85-1719, 87-0172 or 91-1543.

After holding even at that November 1, 1993 hearing that he must release the registry funds to Petitioner, he later refused, fraudulently awarded Local 569 Defendants, Petitioner's former lawyer, and another lawyer who filed a defective notice of lien $23,000 in *ex post facto* judgments, and gave all of the registry funds to them and Fischbach (its illegal $244,000 judgment was also *ex post facto*) on December 15, 1993, and January 13, 1993.

Even after the $244,000 award for Fischbach was overturned May 5, 1995 Brewster would not order it to repay $60,490 in 85-1719 funds he ordered disbursed to it in 1993, lied Fischbach had $2,900 in new liens, again - as in 1993 - cheated Petitioner out of legal interest, held remaining funds without any jurisdiction, and in January, 1996 approved a fraudulent "stipulation" whereby Fischbach and Hillyer & Irwin lawyers transferred $51,072.73 to Kissane & Cook lawyers. Petitioner filed Appeal No. 96-55971.

Petitioner applied for release of his unencumbered 87-0172 jury verdicts, judgments and $7,000 bond he was ordered to post on August 4 and 5, 1994, two days after the appeal court filed its final mandate. Brewster ignored the applications for a 28 U.S.C. § 2042 order. Petitioner again moved to correct the civil docket (as he had to in 85-1719) by having those applications filed.

The otherwise unencumbered 87-0172 funds weren't released after Brewster's $244,000 fees award to Fischbach was reversed May 5, 1995. Chief ninth circuit judge J.C. Wallace (who also sits in San Diego) delayed filing of that court's final mandate for months, Brewster delayed that even longer by again fabricating (as in 85-1719, and in a 93-1857 order filed over Keep's name) a phony "spreading-of-the-mandate" period, and instead approved the fraudulent stipulation between 87-0172 Defendant Fischbach's Hillyer & Irwin lawyers and 91-1543 Trusts Defendants' Kissane & Cook lawyers to steal Petitioner's registry funds by transfer of Fischbach's **non-existent** interest to the Trusts Defendants (again fraudulently including the non-ERISA Training Trust).

Brewster also began convening a series of kangaroo court hearings - similar to November 1 and December 1, 1993 fiascos - culminating in an April 29, 1996 "hearing" to steal Petitioner's registry funds posted as supersedeas bonds for 87-0172 appeals. As in every matter, Petitioner again moved Brewster to recuse, and as usual he refused, cheated Petitioner out of legal FCIA (29 U.S.C.A. § 1961) interest, awarded inflated interest to the 91-1543 Trust Defendants (10%) as per an illegal *ex post facto* "Stipulation," to the Local 569 Defendants who had no judgment (6% from date of judgment for Petitioner) and Petitioner's lying, drug-abusing former lawyer (6% from date of judgment).

Brewster also lied that State law entitled his former lawyer - who breached and withdrew from their contract, first proposed to Petitioner that they file inflated attorneys fee liens and split the money, and later filed fraudulent declarations that he was fired, together with fraudulent, inflated billing statements he concocted *ex post facto* - to file liens on Petitioner's 87-0172 judgments. Brewster cited a long-discredited State case to support those lies.

No State procedure authorized disbursals of Petitioner's funds to that lawyer or others, and he filed Appeal No. 96-55980.

Judge Keep first dismissed this case at a hearing on May 9, 1994, reading from a prepared statement that "this claim" could have been brought in 91-1543, and it is barred by res judicata.[8]

Keep said Brewster "specifically rejected attacks...on the legality of § 1.06" of the CBA in 87-0172, "previously ruled [it] is valid and applicable...and ordered the parties to comply with it," that the "arbitration committee has jurisdiction," and that the "attorney's fees award [against Petitioner] does not violate public policy or the American Rule," and Brewster ruled in 91-1543:

> "Plaintiff would also like to attack the validity of [CBA §] 1.06. If the claim was or should have been adjudicated in a prior lawsuit, the claim is res judicata in this suit. *Federated Department Stores v. Moitie*, 452 U.S. 394."

Appx 116-123. Keep concluded the outrageous statements with:

> "I hold the present claim brought by the Plaintiff is a theory for res judicata purposes that would invalidate the enforcement by Judge Brewster of the arbitrator's award of attorneys fees."

Appx 116-123. Plaintiff explained the gravamen of his Complaint - the illegal $244,000 fees award - did not exist in August, 1992 when he moved to amend in 91-1543, and later 87-0172, to add claims against those who added § 1.06 to the 1998 CBA, that the $244,000 award was under the 1991 CBA, that parties, facts, and claims were different, and showed the motions (Appx 116-123).

The appeal court held it "need not decide whether the district court properly applied res judicata principles" because it reversed "the district court's determination in 87-0172-B. Thus, the district court's determination in this case must also fall."

On remand Keep admitted, but Moskowitz denied, Brewster's Orders re CBA § 1.06 and that $244,000 award, and "the claim [sic] is res judicata" nonsense had been "overturned" in *Moore v. Local 569 of Intern. Broth. of Elec. Workers*, 53 F.3d 1054 (9th Cir. 1995) and Appeal No. 94-55876, but both regurgitated *res judicata* lies "the same claims" were presented in 91-1543 to dismiss again (Appx 124-142). Appeal No. 96-56428 was filed.

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[8] Petitioner believes Brewster authored all statements and orders.

D.C. # 96-1736-G

On October 8, 1996 Petitioner filed a Complaint docketed as 96-1736-G. His Complaint properly invoked the jurisdiction of the court by setting forth a copious statement of the facts upon which he based his right to recover damages, and showing all the causal connections between the facts. The legal duties and the liabilities of Defendants were clearly deduced from those facts.

In the First Cause of Action for Fifth Amendment violations: Count One was against Keep, the law clerk, Clerk of Court, and the Kissane & Cook Defendants for stealing his $500; Count Two was against Brewster, and Hillyer & Irwin and Kissane & Cook Defendants for entering into the "Stipulation" used to "transfer" $52,000 from Petitioner's registry funds to Kissane & Cook from Fischbach 8 months after its $244,000 fees award and interest in his funds was vacated; Count Three was against Brewster and the Court Clerk for refusing to release his unencumbered $150,000 plus interest registry funds after Union Defendants' losing appeal was final, for wrongfully disbursing $5,801.27 plus 6% interest to Union Defendants, and for "withholding" $71,590 "pending" other requests; and count Four was against Keep, Brewster and the Clerk for stealing "court fees" from his registry funds.

The Second Cause of Action against Defendants was for civil conspiracy to violate the Fifth Amendment, because they knew the Trusts had no lien or standing to seize his money, knew the Training Trust was not an ERISA trust and had no award or lien, Brewster knew he had no jurisdiction over the funds he disbursed (including the stipulation) and stole (they took $500, $1,000, and $52,000 using the same $46,500 fees award, knew they were not entitled to 10% interest, Local 569 wasn't entitled to 6% interest, and Plaintiff <u>was</u> entitled to FCIA interest), knew they could not "withhold" release of his property, and knew a "court fee" could not be assessed on his registry property.

The Third Cause of Action was for fraud related to the same Defendants, and same thievery, and the Fourth Cause of Action was for the emotional distress they deliberately inflicted.

Federal Defendants cried "subject matter immunity" and were dismissed: the others moved to dismiss or for summary judgment and were dismissed; the court declined to exercise jurisdiction over State law claims; and Petitioner filed Appeal No. 97-55470.

STATEMENT OF THE CASES ON APPEAL
APPEAL NO. 95-55495

On appeal from Brewster's latest imposition of a $2,000 bond Petitioner argued that "exceptional circumstances, amounting to a judicial usurpation of power, justify recusal of Brewster from all matters pertaining to Plaintiff, his order for the exorbitant $2,000 bond should be vacated, and the [remainder from Appeal No. 93-55287] bond (plus interest) should be redeposited."[9]

Union Trusts and trustees requested another appeal bond due to Petitioner's ostensible "impecunious circumstances," colluded with Brewster to impose the "bonds" ($200,000 and $5,000 (later reduced to $1,000)) to preclude appeal of both the merits, and of that $46,500 attorney fees award (really sanctions F.R.Civ.P. 11 would prohibit), and the circuit dismissed that appeal because he appealed imposition of the $2,000 bond, but did not post it.

Petitioner argued Brewster caused any such "impecunious circumstances" by refusing injunctive relief from those trustees' assaults and batteries (with guns), by "blacklisting" (with NECA) him from work with Fischbach and other contractors, by refusing to release jury verdicts damages after the Union officers/trustees' losing appeals were final, and by stealing the judgments he won.

The circuit court's February 13, 1998 Appeal No. 95-55495 memorandum lied, "the record reveals no basis for questioning that district judge's impartiality," and begged issues on appeal to hold: "determination of the amount of a bond necessary to ensure payment of costs on appeal is left to the discretion of the district court.... [And Brewster] properly awarded the balance remaining of the $1,000 bond, making a new bond necessary" (Appx 55-6).

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[9] Brewster had by now ordered Petitioner to post $208,000.00 in bonds in 91-1543 and $7,000 in 87-0172 bonds despite his winning two earlier cases (85-1719 and 87-0172) filed before 91-1543. He already had 87-0172 jury verdicts against Union officers for stealing Union funds to inflate their personal ERISA Pension Trust accounts, and sued them in their self-appointed dual roles as Union "trustees" in 91-1543 for stealing Trusts assets by inflating their pension payouts from the commonly-held (with Petitioner and other ERISA beneficiaries) assets.

Brewster had also deliberately awarded approx. $300,000 attorney's fees against Petitioner by also abusing the relevant law and facts.

APPEAL No. 95-56701

Petitioner's opening brief proved judge Keep, a district court Clerk, and a law clerk had no jurisdiction over $500.00 registry funds (plus interest) which Keep imposed on him as a costs bond to stop his appeal of Keep's first dismissal of D.C. 93-1857.

Claims in that case were against the Union, Fischbach and NECA conspirators, also ERISA Defendants in 91-1543, who put illegal § 1.06 into their CBA, and then met secretly to award $244,000 attorneys fees against him (as part a plot to extort him into not appealing dismissal of Fischbach/Union racketeering).

Petitioner also showed Keep, the court clerk, and law clerk were required by statute to not defer their duty to release his registry funds, proved 91-1543 parties - Brewster (who recused, assigned this case to Keep, who later assigned it to Moskowitz), Keep and Moskowitz insisted on referring to those non-parties in 93-1857 as "Trust Defendants" - had no standing to intervene in this 93-1857 case, to oppose his application for release of his property, or to file "oppositions" for a 28 U.S.C. § 2042 order releasing his property, to violate court orders limiting contact with the court to writing, or to file motions for reconsideration.

He also proved Keep/Brewster/Moskowitz had no authority to entertain those non-parties' oppositions and motions, that the judges had dishonestly appealed to Federal and Local Rules, that they were overtly biased, that they violated the rules for their own purposes, and that they intended to dismiss and prevent any appeal by using any necessary pretexts, bonds or fees awards.

The circuit court's February 13, 1998 Appeal No. 95-56701 memorandum continued Brewster/Keep's lies that ERISA Trust parties in 91-1543-B were "Defendants" with a right to intervene in 93-1857, that they could "execute their [91-1543] judgment" (Brewster's award of $46,500 attorney fees) in 93-1857, or even on Petitioner's registry funds, while that fees award was on appeal, and they had filed no lien or notice of levy to execute on.

The circuit court also lied that $500 (assessed as a costs bond under FRAP 7), and Appeal No. 94-55876 were "remand[ed]" back to district court, and begged the question that "the trust defendants [sic] had filed a valid lien against the bond [sic]" under Cal.Civ.Proc.Code § 708.410, and lied "reconsideration" of an Order releasing his funds corrected errors (Appx 69-70).

APPEAL No. 96-55629

Petitioner proved Brewster arbitrarily abused any imagined "discretion" by reaffirming outrageous sanctions of $512.50 for moving to recall 87-0172 to allow a claim against the Union and Fischbach Defendants to be added, and showed he had originally cited many precedents for such a motion. He showed Brewster had done no reconsideration as urged by the circuit court when it vacated the sanctions and remanded the case on May 5, 1995.

Petitioner made unrefuted arguments that no "objectively reasonable circumstances" justified the sanctions from biased and partial judge Brewster, showed Brewster made no findings of fact or law, showed Brewster likewise issued no order to show cause, showed that he issued no order describing any offending conduct, and failed to explain any bases for the sanctions, and showed that judge had a long history of bias against petitioner, and partiality towards corrupt contractors and the International Union.

The circuit court rejected Petitioner's appeal by refusing to explain why Brewster's outrageous reaction to Plaintiff's motion to recall 87-0172 from appeal - to allow him to amend by adding a claim against Defendants who inserted illegal § 1.06 into their CBA - could justify sanctions when it was grounded in good law, and was supported by many cited authorities from many circuits.

The circuit court cited Brewster's unsupported statement that Petitioner's motion to amend was frivolous, lied the first remand was only because F.R.Civ.P. 11 sanctions became discretionary, and to give Brewster another chance to exercise some discretion, which he still refused to do. The court then held Brewster didn't need to recuse for abuse of discretion because its "review of the record" showed no impartiality in the "judge" who used an illegal CBA § 1.06 to award $244,000 illegal attorney fees against a *pro se* plaintiff who dared to appeal that judge's abuses of the law.

APPEAL Nos. 96-55971/96-55980

The circuit also whitewashed Brewster's refusal to recuse in this case, where Petitioner asked it to review those ongoing thefts of 85-1719 jury awards, and lied his contention that "no liens had been filed against those funds while that action was pending" fails "because, in its April 29, 1996 order, the district court did not make any disbursements from registry funds posted in 85-1719."

But to effect that head-in-the-sand holding, it lied Brewster "simply required Fischbach & Moore to remit the $60,489.84 that [it] had erroneously [sic] received from the registry funds in CV-85-1719 pursuant to the district court's December 15, 1993 order," and rejected his "contention that [it] erred by ordering Fischbach & Moore to repay the $60,489.84 with 6% interest, as opposed to 10% interest." That dishonest circuit court panel also made the *non sequitur* that "a $2,845.50 disbursal to Fischbach & Moore" from that 85-1719 money "was pursuant to valid liens filed in CV-87-0172 and CV-91-1543."

The panel also malevolently ratified Brewster's malicious thefts of Petitioner's property by holding his contention Brewster "lacked jurisdiction to disburse the registry funds in CV-87-0172" lacks merit because Brewster "retains jurisdiction over matters necessary to satisfy a judgment." The panel rejected contentions his erstwhile, drug-abusing, dead-line missing, colluding-with-the Defendants, sanctioned lawyer's withdrawal was unjustified (in the face of that lawyer's sworn lies he was fired, and California law rejecting Brewster's cite to a roundly discredited authority). It also rejected contentions the lawyer had no valid lien, despite the fact Petitioner had supported every legal contention by citing the appropriate law, and every fact with his excerpts of record.

The panel capped its cryptic rejections of the two appeals in one memorandum - holding Petitioner's contention Brewster had no jurisdiction over the former 87-0172 registry funds disbursed on April 29, 1996, after the case was final on Union Defendants' losing appeal from jury verdicts, lacks merit - supporting it by invalid appeals to a whitewash of Brewster's thefts in Appeal No. 94-55120 (see Petition for Writ of Certiorari No. 95-496).

APPEAL NO. 96-56248

The second appeal memorandum affirming a second dismissal of D.C. # 93-1857 repeated irrelevant district court expatiations on *res judicata*, despite the finding by the first appellate court that both underlying CBA § 1.06 and the gravamen $244,000 attorney fees award were both illegal, and even Keep's dishonest second dismissal Order had admitted, "the ninth circuit struck § 1.06," and "overturned ... the basis of [Keep's first] dismissal of the instant action on res judicata grounds" (Appx 124-7, 142-3).

The first Appeal No. 94-55876 panel specifically considered, under the heading "**The dismissal on res judicata grounds**" that: "the district court determined that [Petitioner] was obligated to pay [$244,000] fees under the fee provision...[and] dismissed this action on res judicata grounds because [his claims here] and in case number 87-0172B centered on the same [CBA] provision," but decided it "need not decide whether [Keep] properly applied res judicata principles ... because ... we reversed [Brewster's] determination [§ 1.06 was valid and applicable] in 87-0172B." The $244,000 award was final November 2, 1993 (Apx 124, 89).

Nonetheless, that second appeal memorandum, like Keep's and Moskowitz's dismissal orders, lied the Petitioner's "claims were or could have been raised" in his 91-1543 motion to amend which Brewster denied on September 10, 1992, and that denial of that motion to amend was "a final judgment on the merits."

But Keep and Moskowitz, in their two orders dismissing the case affirmed by the appeal panel, admitted the "gravamen of his complaint was that the union and employer defendants colluded to include § 1.06 in the Inside Agreement, [and] then illegally conspired to obtain the award of [$244,000.00] attorneys' fees" (Appx 127-137, 138-141). See "subsequent application").

APPEAL No. 97-55470

On appeal from the district court's dismissal of Petitioner's claims against judges Keep, Brewster, the court Clerk, law clerk, Fischbach, its Hillyer & Irwin lawyers, the Union Trusts, and Kissane & Cook lawyers he argued that the district court erred by holding his factual allegations did not deprive Keep, Brewster, Westdal and Chiang - who stole his jury verdicts, judgments, and legal interest from 85-1719 (first given to Fischbach by Brewster in 1993, and given by Fischbach's lawyers to Trust Defendants lawyers in 1996), stole his jury verdicts, judgments and interest from 87-0172 (by giving it to Fischbach, Union, and Petitioner's former lawyer on April 29, 1996), stole money and interest owed to Petitioner by Fischbach (by approving its "stipulation" with the Union Trusts) and stole "court fees" from his registry funds - of immunity because they did not have jurisdiction. He also argued the lawyer Defendants are federal court officers, and were liable for violating his Fifth Amendment Rights (Appx 104-6, 158).

The circuit court's memorandum filed on February 13, 1998 called the case a "42 U.S.C. § 1983 action," lied that Petitioner had alleged Defendants executed "judgment liens" against "bond monies" posted in prior cases to beg those very questions, held the case was properly dismissed "against the district judges and court personnel under the doctrine of absolute [sic] judicial immunity," and lied that claims against the remaining defendants were properly dismissed because Petitioner "failed to sufficiently allege that these defendants acted under color of state law," and he does not appeal "dismissal of his state law claims."

ARGUMENT

The abuses of facts and the law in five district court cases and seven appeals (under appropriate headings) described above show both courts clearly overstepped the boundaries of accepted procedure, departed from the usual course of judicial proceedings conflicted with applicable decisions of this Court, and require the exercise of this Court's powers of supervision (the argumentative headings are at the Table of Contents under "Argument," *supra*).

I.

Overweening judges dismissed D.C. 93-1857 by holding:

> "I also want to stress on the record...it is clear that Mr. Moore's conduct is really nearing the egregious level whereby bonds and Rule 11 sanctions have to be imposed....
>
> First of all, it's very costly to keep litigating and relitigating issues.
>
> Secondly...is rapidly becoming necessary should these lawsuits against one or more [Defendants] herein for these causes of action or those related that could have been brought not stop.
>
> [T]he issues that have been involved in this lawsuit have been ruled upon by the arbitrator, ruled upon by Judge Brewster on more than one occasion--on several--and now ruled upon by me."

Appx (116-122).[10]

[10] No "arbitrator" ruled on anything and both judges were reversed.

Circuit judge Farris dismissed Petitioner's Appeal No. 93-55287 from district judge Brewster's dismissal of D.C. # 91-1543 by lying that he, "unreasonably and vexatiously multiplied [the ERISA] proceedings," but remanded for an attorney fees award. Brewster vindictively awarded attorney fees, and threatened even more fees if a further appeal was filed (Appx 48, 51). Petitioner appealed, Brewster imposed that $2,000 "costs bond on appeal," and Petitioner appealed that bond. Appeal No. 95-55046 of that fees award was dismissed on grounds he didn't post the bond, but Appeal No. 95-55495 from that bond was not acted on for years.

Brewster not only awarded $36,000 fees to the ERISA Trusts Kissane & Cook lawyers for fraudulent billing statements, and an answering brief filled only with personal attacks, but also gave them an extra, unauthorized $10,500 for submitting that billing, adding those "fees" to Petitioner's punishment for his temerity.

Defendants were awarded only $93.00 costs on their appeal on the merits, Petitioner had $907 of a "costs bond on appeal" on deposit with the court, but Brewster then gave that to Defendants as part payment of the fees award and ordered a new $2000 bond deposited. Defendants did not request costs after Appeal No. 95-55046 was dismissed and had Appeal No. 95-55495 $43.12 costs. The bonds were shams imposed to hamstring Petitioner.

The $46,500 attorney fees award, imposition of the bond and dismissal of appeals are pretexts to nullify jury verdicts against thieving Union officers/Trust trustees, and to evade F.R.Civ.P. 11 restrictions on such "sanctions" against the Petitioner.

Brewster was either taking orders from then chief circuit judge J.C. Wallace (a sophist who showed up at an alarming rate on Petitioner's cases, with Farris), or taking "encouragements" from Fischbach and/or its Hillyer & Irwin lawyers.

Petitioner had a right to appeal awards of attorney fees, and the courts must be wary of orders, even those which are well-meaning, that might impermissibly encumber the right of appeal in the federal scheme. *In Re American President Lines Inc.*, 779 F.2d 714 (D.C. Cir. 1985); *Fleischman Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 87 S.Ct. 1404.

Petitioner asked Brewster's to modify Defendants' personal Pension Trust accounts inflated with stolen Union funds after the jury's verdict, he refused, the suit was good, and fees award bad.

II.

The facts and law related to district judge Keep's theft of a $500 "bond for costs on appeal" on appeal, which Petitioner had to post to appeal Keep's first dismissal of D.C. # 93-1857 are the same as those related to Brewster's abuses and motives described *supra*, but Keep's two orders overruling the Order disbursing his $500 in registry funds which was a bond prior to filing of a final mandate on appeal depend on several lies: that the ERISA Trusts in 91-1543 are "defendants" in 93-1857; that the 91-1543 parties were "judgment creditors" in 93-1857; and that they had a lien filed in 93-1857 (Appx 58-64, 65-69).

Of course, Petitioner challenged them on that point both at the district court and on appeal, showing there was no notice of such a lien filed in the civil docket as required by California law (C.C.P § 708.460). On appeal the Petitioner even acknowledged they could execute on the $500 plus interest, as Brewster had also let them execute on the remainder of the $1,000 in 91-1543 using the $46,500 fees award in that case, but only if they had filed a lien in 93-1857, and specifically asked them to produce one. Their lying Kissane & Cook lawyers could not produce any lien and did not, but instead continued the lie, correctly projecting their own ethical limitations onto the judges.

The appeal panel merely regurgitated the same lies as Keep, but lied more specifically, and imperiously, that a lien was filed pursuant to C.C.P. § 708.410, invalidly begged another question: whether the $500 registry funds was still a "bond" after the final appeal mandate was filed, and then pronounced that Keep still had jurisdiction over the "bond" to correct errors.

III.

Brewster's duplicity should again prompt this court to exercise its power of supervision where his malicious award of $512.50 fees to Fischbach and against Petitioner, was vacated, and remanded in *Moore v. Local 569 of the IBEW*, 53 F.2d 1054, 1059 (9th Cir 1995). But on remand Brewster again imposed the same sanctions without issuing any findings of fact or law, and on appeal the panel dishonestly found that they were "unable to conclude the district court abused it discretion" by sanctioning the Petitioner for filing his motion to amend his complaint to add a

claim against parties who included an illegal provision in their CBA with the specific purpose of making an outrageous award of fees against Petitioner to extort him to withdraw his appeal of the judge's misdeeds in furtherance of Fischbach, Unions and NECA (and lawyers) escape from trial on their billions of dollars successful racketeering and fraud on the federal government.

Petitioner's motion to amend was well grounded in fact, and in the law, and he made an exhaustive, competent inquiry, citing many authorities for his motion, none of which had been refuted. Cf., *In Re Keegan Management Co., Securities Litigation*, 78 F.3d 431 (9th Cir. 1996). Further, Brewster awarded sanctions to Fischbach's Hillyer & Irwin lawyers in violation of the law. *Christenberg Garment Co. v. E.E.O.C.*, 434 U.S. 412 (1978).

Even before 1993 sanctions were to be determined by an objective standard of reasonableness under all the circumstances. *Business Guides v. Chromatic Communications Enters.*, 111 S.Ct. 922, 112 L.Ed.2d 1140 (1991). It is ironic that other bad faith by the Defendants here has helped to clarify since 1993 that Rule 11(b)(3) and (4) require evidentiary support or denial for such sanctions. *Community Elec. Serv. v. National Elec. Contr. Ass'n*, 869 F,2d 1235 (9th Cir.), *cert. denied*, 493 U.S. 891, 110 S.Ct. 236, 107 L.Ed.2d 187 (provision in NECA/IBEW CBA for surcharge on contractor and evidence presented provided arguable claims that it injured competition and restrained trade).

Plaintiff was given no notice of any hearing on sanctions, and no opportunity to respond, as required by Rule 11(c), and no Rule 11(c)(1)(A) provisions were honored either. Neither was a Rule 11(c)(1)(B) order to show cause was issued, and Rule 11(c)(2) limits were ignored. Brewster was sued twice by Petitioner and should have recused from all matters involving him.

IV.

On January December 15, 1993 Brewster ordered $60,489.74 of Petitioner's registry funds disbursed to Fischbach pursuant to the illegal $244,000 attorney fees awarded, thereby interrupting his legal FCIA interest on March, 1990 85-1719 judgment. After the illegal award was vacated Fischbach owed him that rate from that December, 1993 date. Instead Brewster, ever the Fischbach advocate, arbitrarily awarded only 6% interest, made deductions

for other supposed judgments against Petitioner (including $512 sanctions) despite the fact no judgments or liens were extant on December 15, 1993 when the previously unencumbered 85-1719 funds were first wrongfully ordered disbursed to Fischbach.

That December 15, 1993 disbursal date should also be the retroactive date for any lien or adverse judgment validity finding. Fischbach's illegal $244,000 fees judgment is a nullity and it may have no retroactive interest in Petitioner's funds created by its own wrongdoing in connection with that illegal fees award.

Nor should 85-1719 losing Union Defendants prosper from their illegal role in allowing Brewster to modify the Petitioner's judgment and interest on December 15, 1993 (by conspiring with the other 91-1543 Defendants to first create that illegal $244,000 fees award), and they should be ordered to pay Petitioner legal FCIA interest from March, 1990 to December, 1993.

Instead of ordering Fischbach to give Petitioner his property after reversal of the illegal fees award, Brewster again conspired with the Hillyer & Irwin and Kissane & Cook lawyers to approve a "Stipulation," served on Petitioner in January, 1996, after that Appeal No. 95-55046 from that 91-1543 $46,500.00 attorney fees award was dismissed on appeal on January 12, 1996.

That "Stipulation" purported to transfer a Fischbach interest in Petitioner's registry funds to those Union Trust Defendants in 91-1543, despite the fact that any retroactive interest Fischbach had in the funds since 1993 ended on May 5, 1995 with its illegal $244,000 fees judgment. That "Stipulation" was as illegal as its attorney fees award. An appeal court memorandum merely lied.

V.

On August 4, 1994 Petitioner's jury verdicts and judgments in 87-0172 were final on appeal, and he again contemporaneously applied for release of the registry funds losing Union Defendants posted as supersedeas bonds. Brewster convened an *ex post facto* hearing on April 29, 1996 to decide who would get those registry funds. Most of those who had appeared on November 1 and December 1, 1993 to steal his 85-1719 jury verdicts reappeared.

The appeal panel lied that the April 29, 1996 kangaroo court "hearing" was "necessary to satisfy a judgment," that Petitioner's erstwhile lawyer George de la Flor "had a valid lien," and then

"rejected [Petitioner's] remaining contentions."

Flor's drug abuse forced him to withdraw on April 11, 1989 after breaching their contract by again missing filing deadlines (he was sanctioned earlier) and billing for months, but tried to file a notice of lien in 87-0172, then on appeal, on February 17, 1994 (it did not conform to C.C.P. § 708,410 or 708.420), can't be filed when a case is appealed and a bond to stay execution is posted (C.C.P. § 697.040), and was not executed on as required by F.R.Civ.P. 69(a). (Appx pp. 37-39).

No such lien had ever been liquidated prior to April 29, 1996 and could not earn any interest at the arbitrary Brewster-interest rate of 6% from a false April, 1992 judgment date (actually Feb. 1993) or any other rate. *United States Fidelity & Guarantee Co. v. American Bldg. Maintenance Co.*, 7 Cal.App.2d 683, 46 P.2d 984, 988 (19_).

The Petitioner's rights to his 87-0172 judgments may not be interfered with, except through procedures authorized by statute. *California Commerce Bank v. Superior Court*, 8 Cal.App.4th 582, 10 Cal.Rptr.2d 410 (1992). Flor never moved for any order under C.C.P. § 708.470(a) to satisfy a lien while the lower court still had jurisdiction, lied to a willing court that 87-0172 billing hours were not for a co-plaintiff (but the court refused to examine telling case files), and filed an affidavit he was fired, flying in the face of earlier declarations swearing he withdrew.

The panel and Brewster used *Pearlmutter v. Alexander*, 97 Cal.App.2d Supp. 16 (1979) to lie an attorney fee lien survives withdrawal. *Cf., Estate of Falco*, 188 Cal.App. 3d 1[illegible], 233 Cal.Rptr. 807 (1987) (specifically discrediting and overturning *Pearlmutter*), *citing Hensel v. Cohen*, 155 Cal.App.3d 563, 202 Cal.Rptr. 85 (1984). Brewster also lied that Flor's fraudulent, altered billing statements was not evidence of unethical behavior.

The appeal panel approved Brewster's lie that attorney liens in federal cases are analyzed under state law, and cite to *Venegas v. Skaggs*, 867 F.2d 527, 531 (9th Cir. 1989) ("not holding that an attorney seeking to defend a contingency fee contract may intervene as of right in the underlying action."); *Bandy v. Mt. Diablo Unified School District*, 56 C.A.3d 230, 234, 126 Cal. Rptr. 890 (1976); *Irsin v. Superior Court*, 63 C.2d 153, 45 Cal. Rptr. 320, 403 P.2d 728 (1965).

Brewster held Petitioner's funds without jurisdiction in case there might be later adverse awards or other claims, both before and after April 29, 1996, but refusals to release the funds was unlawful. *United States v. Wilson*, 540 F.2d 1100, 1103-04 (D.C. Cir. 1976) (a claim by the owner [to district court] for [release] of his property cannot be successfully resisted by answering that the property is *subject* to forfeiture).

Brewster and the appeal panel lied about Petitioner's costs awards in district court and several appeals to refund Local 569 Defendants $5,801.27, and, like Fischbach, they had no right to "interest at 6% per annum" from the registry funds.

VI.

The appeal panel's dishonesty in affirming Keep/Moskowitz's lies that Petitioner sued "defendants for improperly restricting his right to file lawsuits," and affirming the second dismissal of D.C. # 93-1857 for damages from that illegal award of $244,000 fees (including their theft of 85-1719 jury verdicts, threats, abusive "judgment debtor" examinations before equally abusive federal judges, personal attacks, and ongoing lies he was "indigent") on the very same ground reversed in May, 1985 was fraudulent. The two district court judges and the appeal panel lied overtly that denial of Petitioner's motions to amend years earlier (different parties, different claims) to add a claim against the parties who first put the illegal provision in their CBA were *res judicata* on claims for damages caused by this illegal $244,000 fees award.

The appeal panel ignored an earlier panel's decision that both the CBA provision and fees award were illegal, that Defendants conspired to violate the law to damage Petitioner, and by basing duplicitous *res judicata* rulings on the same illegal provision, those judges also conspired to violate public policy.

A district court hearing and orders show bias and partiality, acknowledge CBA § 1.06 was a product of collusion and violated Petitioner's rights, lied there were "two suits," and denial of motions to amend is dismissal on the merits and "judgment," that a "transactional nucleus of events" existed, that the first appeal panel did not address "application of the *res judicata* doctrine," and that Levy Defendants did not move to dismiss with the others (enter Brewster-buddy Moskowitz) (Appx 116-123, 127-141).

VII.

The appeal panel dismissed Petitioner's appeal of district court dismissal of his suit against Brewster, Keep, a law clerk, court Clerk, Hillyer & Irwin and Kissane & Cook lawyers, their Fischbach, Union Trusts and NECA clients for stealing $500, 85-1719 and 87-0172 judgments, and illegal "court fees" from his registry funds. The jury verdicts in the two cases are against Kissane & Cook's Union Trust clients in "dual roles" as Union officers. The "judges" had personal relationships with lawyers, but no jurisdiction over registry funds after appeals were final.

Petitioner alleged Brewster and Keep acted in the absence of jurisdiction, and could be sued with court personnel for damages caused him, *citing Bradley v. Fisher*, 13 Wall. 335, 351 (1872). The lower court dismissed by begging the question Brewster and Keep disbursed "bonds," lying the thefts of Petitioner's registry funds were "functions normally performed by a judge," and that this Court held in *Mirales v. Waco*, 502 U.S. 9 (1991) that they are "generally immune," a euphemism for absolute immunity.

In briefing before the appeal court Brewster and Keep argued immunity was not limited to a particular case or controversy, but extended to any matter "within the subject matter jurisdiction of the district court," also citing *Mirales v. Waco*. That court was less specific but cited *Moore v. Brewster*, 96 F.3d 1240 (9th Cir. 1996) (immunity covers all potential subject matter jurisdiction).

CONCLUSION

Defendants, including federal judges, fraudulently conspired to steal Petitioner's property, including interest, by: awards of attorney fees and sanctions against him; conditioning of appeals of the fees and sanctions on the "bonds for costs on appeal"; the refusals to order Defendants to repay the stolen funds even after those thefts were reversed on appeal; instead conspiring amongst themselves to steal the property again with stipulations, awards of costs and fees to each other, and with kangaroo court hearings held without jurisdiction or standing, and fraudulently conspiring to dismiss remedial suits, to claim immunity from damages suits, and to refuse to exercise jurisdiction over damage claims.

Dated: 4-24-1998

Lawrence Moore

Lawrence Moore

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EMPLOYEE RETIREMENT INCOME SECURITY ACT, Title I, § 3 (29 U.S.C. 1002)

DEFINITIONS

Sec. 3. For purposes of this title:

(5) The term "employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

(7) The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

(14) The term "party in interest" means, as to an employee benefit plan - (C) an employer any of whose employees are covered by such plan.

LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT

TITLE V - SAFEGUARDS FOR LABOR ORGANIZATIONS (29 U.S.C. 501)

Fiduciary Responsibility of Officers of Labor Organizations

Sec. 501. (a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties

and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

(b) When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

(c) Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than $10,000.00 or imprisoned for not more than five years, or both.

California Code of Civil Procedure § 1710.50. Stay of enforcement

(a) The court shall grant a stay of enforcement where:

(3) The judgment debtor has made a motion to vacate pursuant to § 1710.40. Under this paragraph, enforcement shall be stayed until the judgment debtor's motion to vacate is determined.

C.C.P. § 697.040. Stay of enforcement of judgment

(a) If enforcement of the judgment is stayed on appeal by the giving of a sufficient undertaking under Chapter 2 (commencing with Section 916) of Title 13:

(1) Existing liens created under this division are extinguished.

(2) New liens may not be created under this division during the period of the stay.

(b) Unless the court otherwise expressly orders, a stay of enforcement of the judgment under Section 918 does not extinguish or prevent the creation of a lien under Article 2 (commencing with Section 697.310) or Article 3 (commencing with Section 697.510); but, unless the court otherwise expressly orders, no other liens may be created or continued under this division during the period of stay of enforcement.

(c) Unless the court expressly orders otherwise, if enforcement of the judgment is stayed pursuant to Section 1699 or 1710.50:

(1) Existing liens created under this division are extinguished.

(2) New liens may not be created under this division during the period of the stay.

§ 708.410 Interests subject to lien; filing notice of lien and abstract or copy of judgment; service; pending, defined

(a) A judgment creditor who has a money judgment against a judgment debtor who is a party to a pending action or special proceeding may obtain a lien under this article, to the extent required to satisfy the judgment creditor's money judgment, on both of the following:

(1) Any cause of action of such judgment debtor for money or property that is the subject of the action or proceeding.

(2) The rights of such judgment debtor to money or property

under any judgment subsequently procured in the action or proceeding.

(b) To obtain a lien under this article, the judgment creditor shall file a notice of lien and an abstract or certified copy of the judgment creditor's money judgment in the pending action or special proceeding.

(c) At the time of the filing under subdivision (b) or promptly thereafter, the judgment creditor shall serve on all parties who, prior thereto, have made an appearance in the action or special proceeding a copy of the notice of lien and a statement of the date when the notice of lien was filed in the action or special proceeding. Service shall be made personally or by mail. Failure to serve all parties as required by this subdivision does not affect the lien created by the filing under subdivision (b), but the rights of a party are not affected by the lien until the party has notice of the lien.

(d) For the purpose of this article, an action or special proceeding is pending until the time for appeal has been finally determined.

708.420 Contents of notice of lien

The notice of lien under Section 708.410 shall contain all of the following:

(a) A statement that a lien has been created under this article and the title of the court and the cause and number of the pending action or proceeding in which the notice of lien is filed.

(b) The name and last known address of the judgment debtor.

(c) The name and address of the judgment creditor.

(d) The title of the court where the judgment creditor's money judgment is entered and the cause and number of the action, the date of entry of the judgment, and the date of any subsequent renewals, and where entered in the records of the court.

(e) The amount required to satisfy the judgment creditor's money judgment at the time the notice of lien is filed in the action or proceeding.

(f) A statement that the lien attaches to any cause of action of the judgment debtor that is the subject of the action or proceeding and to the judgment debtor's rights to money or property under any judgment subsequently procured in the action or proceeding.

(g) A statement that no compromise, dismissal, settlement, or satisfaction of the pending action or proceeding or any of the judgment debtor's rights to money or property under any judgment procured therein may be entered into by or on behalf of the judgment debtor, and that the judgment debtor may not enforce the judgment debtor's rights to money or property under any judgment procured in the action proceeding by a writ or otherwise, unless one of the following requirements is satisfied:

(1) The prior approval by order of the court in which the action or proceeding is pending has been obtained.

(2) The written consent of the judgment creditor has been obtained or the judgment creditor has released the lien.

(3) The money judgment of the judgment creditor has been satisfied.

(h) A statement that the judgment debtor may claim an exemption for all or any portion of the money or property within 30 days after the judgment debtor has notice of the creation of the lien and a statement that, if the exemption is not claimed within the time allowed, the exemption is waived.

C.C.P. § 708.460. Statement concerning lien endorsed on judgment; inclusion in abstract

(a) If a lien is created pursuant to this article, the court clerk shall endorse upon the judgment recovered in the action or special proceeding a statement of the existence of the lien and the time it was created.

(b) Any abstract issued upon the judgment shall include a statement of the lien in favor of the judgment creditor.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case No. 85-1719-B

AMENDED JUDGMENT ON SPECIAL VERDICT

This case came on regularly for trial before a jury on October 3, 1989, and on December 18, 1989, the jury rendered its verdict. Therefore, it is ordered, adjudged, and decreed as follows:

On the first cause of action, plaintiff shall recover from defendant International Brotherhood of Electrical Workers, Local 569 ("Local 569") the amount of $43,156.31.

On the second cause of action, plaintiff shall recover jointly and severally from defendants Local 569, Heisler, and Flowers the amount of $1,000.00. The plaintiff shall also recover punitive damages in the amount of $10,000.00 from Local 569, $5,000.00 from defendant Heisler, and $2,500.00 from defendant Flowers.

On the third cause of action, plaintiff shall recover damages in the amount of $500.00 jointly and severally from defendants Local 569, Heisler, and Flowers, and punitive damages in the amount of $1,000.00 from defendant Flowers.

On the fourth cause of action, plaintiff shall recover damages in the amount of $500.00 jointly and severally from defendants Local 569, Heisler, and Flowers, and punitive damages in the amount of $2,500.00 against defendant Flowers.

IT IS SO ORDERED.

FILED: MAR 21 1990 RUDI M. BREWSTER
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case No. 91-1543-B

Order denying Plaintiff's motions for reconsideration; denying in part and granting in part Defendants' motion to dismiss; granting Defendants' motion for fees and costs; and staying case until Plaintiff posts a cost bond

The above captioned matter came on regularly for hearing on August 24, 1992, before the Honorable Rudi M. Brewster. Plaintiff appeared in propria persona; Ray Van Der Nat, Esq., Matthew Kissane, Esq. and Melissa Cook, Esq., appeared for defendant Trusts and Trust Directors; Craig Brown, Esq., appeared for Fischbach & Moore. Upon consideration of the Motions, their oppositions and oral argument, the court hereby orders:

1. Plaintiff's Motion to file the "Second Amended Complaint" (which is actually a third amended complaint) is denied. Plaintiff moved to amend further his second amended Complaint to allege that certain union members made defamatory statements against him. The court finds that the alleged defamatory statements, some of which took place while plaintiff campaigned to be elected Business Manager of the Local, are not defamatory. Causes of action based upon them would not withstand a Motion to dismiss and an amendment based on them would be futile. Futile amendments do not have to be permitted. Lockwood Foundation v. Evangelical Alliance Mission, 930 F.2d 764 (9th Cir. 1991).

Plaintiff also would like to amend his second amended complaint to allege that he was assaulted by an individual named Carl Burns. While plaintiff may be able to state a claim against Mr. Burns, the proposed amendment does not allege anything arising out of the events embraced in the second amended complaint. Therefore, the amendment shall not be permitted.

Plaintiff would also like to attack the validity of Section 1.06 of the Inside Agreement. If the claim was or should have been adjudicated in a prior lawsuit, the claim is res judicata in this

suit. Federated Dept. Stores v. Moitie, 452 U.S. 394 (1981). The plaintiff in this action is also the plaintiff in Case No. 87-0172. In that case, plaintiff unsuccessfully brought suit against Fischbach & Moore. This court has held that § 1.06 entitles the prevailing party, Fischbach & Moore to an award of fees. Plaintiff cannot now attack the validity of § 1.06.

2. Plaintiff's Motion for Reconsideration of the Court's April 8, 1992 order granting defendants' Motions to Dismiss is denied. Plaintiff's filing of the Motion for Reconsideration violates Local Rule 7.1. Plaintiff does not allege any new facts and circumstances, and he filed the Motion for Reconsideration approximately sixty days beyond the thirty day period within which such a motion may be made.

Because the Motion to Reconsider should not have been brought and unreasonably increased the defendants' costs, plaintiff must pay the attorneys' fees and costs incurred in opposing the Motion. The fees and costs incurred by all respondents to the Motion to Reconsider are to be paid. If the plaintiff and concerned respondents cannot agree as to the appropriate amount of fees or costs, a motion for said determination may be noticed before this Court. However, at that hearing the court will determine which party acted unreasonably and that party will have to pay the fees and costs of such hearing. All causes of action in this lawsuit are stayed until these costs and fees are paid in full.

3. Defendant's Motions to Dismiss as to the Second Amended Complaint are granted with thirty days leave to amend except for the cause of action against various officers of Local 569 who allegedly caused excess pension credit hours to be credited to the accounts of Local 569 employees and agents; however, as to that cause of action, the court orders plaintiff to refile in order to allege with particularity the facts comprising the claim, the names of the defendants being accused, and to state the years during which the alleged illegal contributions were made. Any such amendment is subject to the required prior compliance with paragraph two hereabove.

4. Pursuant to Fed.R.Civ.P. 11, this lawsuit, including discovery, is stayed as to all Trusts and Trust directors on all causes of action except as to the cause of action asserted against

the pertinent officers of Local 569 who caused the alleged excessive pension credits to be sent to the Union Trust on behalf of certain Union agents and employees until plaintiff posts a $200.000 cash or corporate surety bond to be used to pay said defendants' attorneys' fees in the event that plaintiff does not prevail in his claims against the Trusts and Trust directors and officers. The court finds that plaintiff has unreasonably and vexatiously multiplied the proceedings in this matter. In determining that plaintiff has been unreasonable and vexatious, the court considers the fact that this is the third suit against defendants alleging many of the same violations. The proceedings in each of the cases have been exceedingly voluminous and excessive. The court has also reviewed the complaints in this action twice and questions the merit of the lawsuit against the Trusts. Without this bond, the Trusts' beneficiaries have no assurance that the Trusts will not be jeopardized or bankrupted defending against a lawsuit from which the Trusts are likely to be exonerated. This bond is meant to ensure that the Trusts will be able to recover the costs and fees expended in their defense in the event that they prevail.

IT IS SO ORDERED.

Filed: SEP 10, 1992

RUDI M. BREWSTER
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case No. 91-1543-B

Order granting Plaintiff's ex parte application for a final order and dismissing case in its entirety

The court has received plaintiff's ex parte application for a final order dismissing this case. Plaintiff's ex parte application is granted and this case is dismissed in its entirety with prejudice.

On August 24, 1992 Plaintiff's motions for leave to amend and for reconsideration of previous denial of leave to amend and defendants' motion to dismiss came on regularly for a hearing before the Honorable Rudi M. Brewster. All of plaintiff's motions were denied. Defendants' motion to dismiss the Second Amended Complaint was granted except as to the causes of action against various officers of Local 569 who allegedly caused excess pension credit hours to be credited to be credited to the accounts of Local 569 employees and agents. Plaintiff was also ordered to pay defendants' attorney fees incurred to oppose the motion to reconsider. Finally, the court stayed all aspects of this lawsuit pursuant to Fed.R.Civ.P. 11 as to all defendants except as to the cause of action asserted against the pertinent officers of Local 569 who caused the alleged excessive pension credits to be sent to the Union Trust on behalf of certain Union agents. Plaintiff would only be allowed to proceed with this lawsuit if he posted a $200,000 cash or corporate surety bond to be used to pay said defendants' attorney fees in the event that plaintiff did not prevail in his claims against the Trusts and Trust directors and officers.

Plaintiff has communicated to this court that he is unable to post $200,000 in cash or as a corporate surety bond as required by the August 24, 1992 order in order to proceed with this action. The parties have been unsuccessful in attempts to agree on the amounts of the attorney fees for opposing plaintiff's motion to reconsider. Plaintiff has made it known to the court that he is unable to pay any amount for attorneys fees that may be awarded.

Because plaintiff has stated that he is unable to post the necessary bond before this court is willing to permit plaintiff to pursue this lawsuit and because he has stated that he is unable to pay any amount of attorneys fees to defendants, plaintiff's ex parte application for a final order is granted and this case is dismissed in its entirety.

IT IS SO ORDERED.

Filed: DEC 21, 1992 Rudi M. BREWSTER
U.S. DISTRICT JUDGE

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Appeal No. 93-55287
D.C. No. CV 91-1543-B

Appeal from the United States District Court for the Southern District of California Rudi M. Brewster, District Judge, Presiding

Filed June 27, 1994**
Pasadena, California

Before: FARRIS, O'SCANNLAIN, and TROTT, Circuit Judges.

Lawrence Moore contends the district court erred in (1) dismissing without leave to amend the remainder of his First Amended Complaint; (2) requiring him to pay the defendants' attorneys' fees incurred in opposing Moore's motion for reconsideration before proceeding any further with his remaining causes of action; and (3) requiring him to post a $200,000 bond before proceeding any further with his causes of action against the Trust Funds. We dismiss the appeal.

I.

In general, a plaintiff may not appeal a voluntary dismissal. Wickland Oil Terminal v. Asarco, Inc., 792 F.2d 887, 893 (9th Cir. 1986), cert. denied, 484 U.S. 822 (1987); Unioil, Inc. v. E.F. Hutton & Co., Inc., 809 F.2d 548 (9th Cir. 1986); Seidman v. City of Beverly Hills, 785 F.2d 1447, 1448 (9th Cir. 1986) (per curiam). An exception to this general rule arises when a

* This disposition is not appropriate for publication and may not be cited to or by the courts of this Circuit except as provided by Ninth Circuit Rule 36-3.

** The panel finds this case appropriate for decision without oral argument. Fed.R.App.P. 34(a); 9th Cir. R. 34-4.

district court grants a voluntary dismissal as a means of expediting the review of a party's claim. United States v. Procter & Gamble, 356 U.S. 677, 680-81 (1958); Thomsen v. Cayser, 243 U.S. 66, 83 (1917). This exception "applies only if 'the only other route is a contempt judgment, and by taking a dismissal and appealing, the appellant avoids unseemly conflict with the District court over the contempt issue.'" Plasterers Local Union No. 346 v. Wyland Ent., Inc., 819 F.2d 217, 218 (9th Cir. 1987) (quoting 2 Federal Procedure, Lawyers Edition § 3:315 (1981)).

Because another route of appeal was available, we lack jurisdiction over Moore's appeal from the voluntary dismissal order. The district court's order of September 10, 1992 was immediately appealable as a collateral order because it (1) conclusively determined that a bond was required before the matter could proceed; (2) resolved an important issue separate from the merits; and (3) was effectively unreviewable on appeal from the final judgment because Moore claims he could not afford to post the bond. Riverhead Sav. Bank v. National Mortgage Equity Corp., 893 F.2d 1109, 1114 (9th Cir. 1990). Moore failed to file a notice of appeal within 30 days of September 10, 1992. Fed. R. App. P. 4. His appeal is dismissed.

II.

Pursuant to Section 502(g) of ERISA, the Trust Funds seek to recover the attorneys' fees they incurred in opposing this appeal. 29 U.S.C. § 1132(g). In determining whether attorneys' fees should be awarded to a party in an ERISA suit, we consider:

> (1) The degree of the opposing parties' culpability or bad faith; (2) the ability of the opposing parties to satisfy an award of fees; (3) whether an award of fees against the opposing parties would deter others from acting under similar circumstances; (4) whether the parties requesting the fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA; and (5) the relative merits of the parties' positions.

Hummell v. S.E. Rykoff & Co., 634 F.2d 446, 453 (9th Cir.

1980); see also Sokol v. Bernstein, 812 F.2d 559, 560 (9th Cir. 1987) (applying Hummell to determine whether attorneys' fees should be awarded on appeal).

We usually are reluctant to award attorneys' fees against an ERISA plaintiff for fear of chilling meritorious claims. In Sokol, we noted that the Hummell "criteria often suggest that attorneys' fees should not be awarded against ERISA plaintiffs." 812 F.2d at 560. However, aside from Moore's limited ability to satisfy a fee award, the remaining factors favor granting the Trust Funds' request.

Moore filed complaints against the Trust funds that raised vague and conclusory allegations lacking in either fact or law. Cf. West Coast Theater Corp. v. City of Portland, 897 F.2d 1519, 1526-28 (9th Cir. 1990). His complaints repeated allegations that had been litigated in his earlier suits. Nothing in the record suggests that further opportunities to amend would have solved these problems. Lockman Foundation v. Evangelical Alliance Mission, 930 F.2d 764, 772 (9th Cir. 1991). In addition, the court found that Moore had "unreasonably and vexatiously multiplied the proceedings in this matter."

On this record sanctions are appropriate. The purpose of ERISA is to protect the beneficiaries of pension plans. Sokol, 812 F.2d. at 560. This purpose is not served by allowing employee trust funds to be depleted in the defense of unreasonable and vexatious claims.

Although the district court required Moore to post a $1000 bond to cover the defendants' court costs, it did not make findings as to attorneys' fees. We remand for the limited purpose of allowing the district court to determine an appropriate attorneys' fee award for the Trust Funds. Perkins v. Standard Oil Co., 399 U.S. 222, 223 (1970).

DISMISSED and REMANDED for an award of attorney's fees.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case No. 91-1543-B
Transcript of Motion Hearing Before
The Honorable Rudi M. Brewster
United States District Judge
SAN DIEGO, CALIFORNIA, MONDAY, OCTOBER 3, 1994
(Call to order of the Court)

MS. COOK: Good morning, your Honor. Melissa Cook on behalf of San Diego Electrical Industry trust funds.

MR. KISSANE: Good morning, your Honor. I'm appearing with Ms. Cook, Matthew Kissane.

MR. MOORE: Lawrence Moore, appearing for himself, your Honor, and I'd like to make my usual objection to you hearing any matter concerning me and ask you to recuse.

THE COURT: Yes, I'm aware of that.... I have no animosity against Mr. Moore. I understand that he's filed a suit against me. That will work its course and I'm certainly able to handle these cases.... The Defendant's concern is they want to recuse me because they want to avoid Mr. Moore appealing whatever order they're going to get from the successor judge. It's a fantasy. If you think that Mr. Moore is not going to appeal any order that any court gives you're smoking something because Mr. Moore will appeal. If he doesn't think it's correct, he will appeal it. He's going to use the judicial system. He's a citizen. He's entitled to do it and he's going to do it. I can guarantee you that unless he wins 100 percent of what he asks for, he will appeal, and it doesn't matter who represents the Defendants in this case. If Chief Justice Renquist represented them, there would still be an appeal. Right Mr. Moore, if you didn't get what you wanted?

MR. MOORE: Probably doubly so if Renquist represented me, your Honor.

. . .

THE COURT: So, in other words, I recuse on new cases, but on the cases that are already before the Court, there's no reason for the Court to recuse itself.

MR. MOORE: Would the Court mind if I submitted a

copy of the suit against you and a copy of your order recusing yourself on one case as exhibits in this case?

THE COURT: Yeah, there's no necessity of that. Let's get on with the business at hand.

. . .

Then, finally, we have before us this morning the Court of Appeal's order for this Court to determine attorney's fees to be awarded to the trust fund Defendants arising out of their costs in the action, including the appeal and anything subsequent to the appeal.

. . .

MR. MOORE: Now, as to my two arguments, your Honor.

THE COURT: I just want to say this. If Mr. Moore does appeal the amount of the award, obviously he runs the risk that the Court of Appeal will order costs and fees to the trust funds arising out of that appeal as well, and I'm sure Mr. Moore, if he didn't realize that before now, he has heard it from this Court now that he should be advised that that is a possibility. The Court of Appeal, if requested by the Trusts, might award costs and fees to the Trust in connection with the appeal of this Court granting attorney's fees.

Now, therefore, I think that with respect to appealing the order on the judgment for attorney's fees out of the appeal -- I'm not making a determination on this, but it's possible that the Plaintiff, in order to appeal that judgment, would have to post a bond for it.

MS. COOK: I understand.

THE COURT: -- I'm more or less just cautioning -- I'm just advising Mr. Moore of that possibility. I'm not making a finding and I'm not entering an order with respect to that....

MR. MOORE: So, did the Court consider my argument that the Appeals Court was misled by the final order of this Court in that I never sued the trusts before?

THE COURT: Yes.

MR. MOORE: And furthermore there was no --

THE COURT: I considered that, but I don't review the Court of Appeals. I've considered your argument. I don't find any merit in it whatsoever.

MR. MOORE: You say that I did sue the trusts before?

THE COURT: Your suit against the trusts was the suit that was on appeal by the trusts.

MR. MOORE: That's correct.

THE COURT: You appealed your voluntary dismissal of your suit against the trusts.

MR. MOORE: It wasn't a voluntary dismissal, your Honor.

THE COURT: The Court of Appeals regarded it as such.

MR. MOORE: The Court of Appeals has done that in another case.

THE COURT: Well, I'm not the Supreme Court, Mr. Moore.

MR. MOORE: Well, why are you begging the question, your Honor?

THE COURT: You make those arguments to the Court of Appeal. I don't think they misinterpreted this case.

MR. MOORE: I'm perfectly capable of that. I'm just objecting to you begging that question.

THE COURT: I'm not begging any questions.

MR. MOORE: I'm asking you two specific things. Did you, by making this award, find that I had previously sued the trusts in other cases? And did you by making this award make the finding that you found in the case against the trust that my claims against the trust were frivolous and vexatious?

MR. KISSANE: Unless Mr. Moore has noticed your deposition, your Honor, I would request that you limit your comments so that he doesn't have more of a record to bring up.

THE COURT: I think I've covered the issues that are before me this morning. So that will conclude the matter. Thank you all for your input.

MS. COOK: Thank you, your Honor.

(Proceedings concluded)

I certify that the foregoing is a correct transcript from the electronic sound recording of these proceedings in the above-entitled matter.

Karen Johanson 11-17-94

Transcriber

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case No. 91-1543-B

Order Granting Trust Defendants' Motion for Reasonable Attorney's Fees; Disbursing Partial Proceeds of Cost Bond and Judgment

On October 3, 1994, a hearing was held before the Honorable Rudi M. Brewster to determine the reasonableness of the Trust Defendants' attorneys' fees as awarded by the Court of Appeals and to determine disbursement of the proceeds of the cost bond posted by plaintiff on appeal. Lawrence Moore appeared for himself; Melissa W. Cook, Esq. and Matthew T. Kissane, Esq. appeared for the Trust Defendants. Upon consideration of the motion and oral argument thereon, the court hereby:

1. Grants Trust Defendants' Motion for Reasonable Attorneys' Fees and awards Trust Defendants their attorneys' fees as awarded by the Court of Appeals in the amount of $46, 429.75;

2. From the cost bond of $1,000.00 posted by plaintiff, orders that the following amounts be disbursed to the following parties:

a. $93.72 to the Trust Defendants for their costs incurred on appeal as awarded on Trust Defendants' Bill of Costs by the Ninth Circuit Court of Appeals;

b. As to the remaining balance of $906.28, the court orders the said sum to be held by the Clerk of the Court for further disposition in the hearing presently calendared for 10:30 a.m., February 6, 1995.

Plaintiff, both orally and in writing, renewed his motion for recusal on grounds of bias. Defendants joined in this motion out of concern that plaintiff would be more likely to appeal any forthcoming judgment if the motion for recusal were denied. The court hereby DENIES both motions for recusal. The court reiterates that it has no bias for or against plaintiff or any of the parties, nor is it aware of any other legal ground for recusal. Moreover, the court does not regard putative protection from appeal as a legitimate basis on which to grant a motion for

recusal.

IT IS SO ORDERED.

Filed: OCT 17, 1994 RUDI M. BREWSTER
U.S. DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPEAL NO. 95-55046 ORDER FILED DEC 8, 1995

Before: Sneed, Circuit Judge

Appellant filed the notice of appeal on November 14, 1994 and the clerk set a briefing schedule. On February 16, 1995, the district court entered an order requiring appellant to post a bond as security for costs on appeal and staying the appeal pending payment of the bond. Appellant filed a motion for reconsideration of the district court motion. The clerk stayed the appeal pending resolution of the motion for reconsideration. On October 2, 1995, upon the district court's affirmance of its previous order, the clerk set a new briefing schedule. Appellees now move for reconsideration of the clerk's order.

Appellees have failed to cite any authority which gives the district court jurisdiction to stay an appeal pending before this court. The motion for reconsideration is therefore denied.

Within 14 days from the date of this order, appellant shall either post the bond and provide written verification that he has done so or show cause why this appeal should not be dismissed for lack of prosecution. Ninth Cir. R. 42-1. If appellant elects to show cause, appellees may reply within 7 days from service of the response.

The briefing schedule is stayed pending compliance with this order.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPEAL NO. 95-55046 ORDER FILED JAN 12, 1996

Before: Sneed, Hall, and Brunetti, Circuit Judges

The court has reviewed appellant's response to this court's order to show cause. Appellant's request to stay the district court's order requiring him to post bond for the costs of this appeal is denied. This appeal is dismissed. 9th Cir. R. 42-1; see this court's order of December 8, 1995.

A certified copy of this order served on the district court shall act as and for the mandate of this court. No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Appeal No. 95-55495

D.C. No. CV-91-1543-B

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Rudi M. Brewster, District Judge, Presiding

Filed February 13, 1998**

Before: PREGERSON, CANBY, and LEAVY, Circuit Judges.

Lawrence Moore appeals pro se the district court's order requiring him to post a $2,000.00 appeal bond and an order permitting San Diego Electrical Health and Welfare Trust, San Diego Electrical Pension Trust and San Diego Electrical Training Trust ("trust defendants") to execute a judgment for attorneys fees against a $1,000 appeal bond. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Moore contends that the district judge erred by failing to recuse himself pursuant to 28 U.S.C. § 455. We disagree. A denial of a motion for recusal is reviewed for an abuse of discretion. See Mayes v. Leipziger, 729 F.2d 605, 607 (9th

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir.R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a); 9th Cir.R. 34-4. Accordingly, appellant's request for oral argument is denied.

Cir. 1984). Our review of the record reveals no basis for questioning the district judge's impartiality. See Liteky v. United States, 510 U.S. 540, 555-56 (1994).

Moore next contends that the district court erred by requiring him to post a $2,000 bond as a condition of appealing an award of attorneys fees to the Trust Defendants. We disagree. The determination of the amount of a bond necessary to ensure payment of costs on appeal is left to the discretion of the district court, see Fed.R.App.P. 7, and we are unable to find any abuse of discretion.

Moore finally contends that the district court erred by requiring a $2,000 bond because Moore already had a balance of $906.28 remaining of the $1,000 bond he had posted on his first appeal of CV-91-1543. We disagree. The district court properly awarded the balance remaining of the $1,000 bond to the trust defendants pursuant to liens the trust defendants had against the $1,000 bond, making a new bond necessary.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 93-1857-K

ORDER GRANTING EX PARTE APPLICATION
FOR RELEASE OF BOND

On September 28, 1994 this court granted Defendants' motion to fix security for costs, requiring Plaintiff to post a $500 bond prior to filing an appeal of this Court's judgment in this action. On October 17, 1994 Plaintiff posted the bond and appealed to the Ninth Circuit Court of Appeals. On July 24, 1995 this Court spread the mandate of the Court of Appeals, affirming in part and reversing in part this Court's judgment, and remanding in part for further proceedings. On August 10, 1995 Plaintiff submitted the instant ex parte request for release of his security bond.

This Court finding good cause therefor, IT IS HEREBY ORDERED that Plaintiff's $500 bond shall be exonerated, and the funds returned to him by the Clerk of the Court.

IT IS SO ORDERED.

Filed: AUG 18, 1995 Marilyn Huff, for
JUDITH N. KEEP, Chief Judge
United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 93-1857-K

ORDER VACATING THE COURT'S AUGUST 18, 1995 ORDER, STAYING RELEASE OF PLAINTIFF'S BOND, AND SETTING BRIEFING SCHEDULE

On September 28, 1994 this Court granted Defendants' motion to fix security for costs, requiring Plaintiff to post a $500 bond prior to filing an appeal of this Court's judgment in this action. On October 17, 1994 Plaintiff posted the bond and appealed to the Ninth Circuit Court of Appeals. On July 24, 1995 this court spread the mandate of the Court of Appeals affirming in part and reversing in part this Court's judgment, and remanding in part for further proceedings.

On August 10, 1995 Plaintiff submitted an ex parte request for release of his security bond. On August 15, 1995 San Diego Electrical Health and Welfare Trust, San Diego Electrical Pension Trust and San Diego Electrical Training Trust (the "Trust Defendants") submitted an opposition to Plaintiff's ex parte motion. The Trust Defendants are the party defendants in Southern District Civil Case 91-1543-B before Judge Brewster. In their opposition papers the Trust Defendants assert that they are valid judgment creditors pursuant to a judgment against Plaintiff entered on October 3, 1994 by Judge Brewster. The Trust Defendants further allege in their opposition that Plaintiff has not contributed any money in satisfaction of said judgment, and that on August 14, 1995 they filed a lien against the $500 bond at issue in the instant case.

The Clerk of the Court duly stamped the Trust Defendants' opposition as "received" on August 15 but erroneously forwarded the papers to Judge Brewster's chambers on August 16. Judge Brewster and his staff were out of the District from August 16 through August 18 because Judge Brewster was sitting by designation on a Ninth Circuit appellate panel in San Francisco. On August 21 Judge Brewster's staff forwarded the opposition papers back to the Clerk of the Court with instructions

to forward the papers to Judge Keep's chambers. On August 22 the Clerk's office sent the opposition to Judge Keep's chambers.

Because the opposition papers had been stamped "received" rather than "filed," they were not entered in the Clerk of the Court's computer docketing system. Thus prior to August 22 this Court was unaware that an opposition had been submitted. On August 18 this Court therefore issued an order granting Plaintiff's ex parte application for exoneration of the bond on the erroneous assumption that there was no opposition thereto.

On August 23 the Judgment Creditors' counsel received a copy of the Court's August 18 order. Counsel then telephoned chambers to inquire why the August 18 order neither acknowledged nor addressed the Judgment Creditors' August 15 opposition. Judge Keep's law clerk then explained that Judge Keep's chambers had only received the opposition papers in the afternoon of August 22, was not previously aware that an opposition had been submitted, and had not considered the opposition in the August 18 order. Counsel then informed chambers that she would immediately file a motion for reconsideration, and did so.

Judge Keep's chambers contacted the Financial Manager of the Clerk of Court's office and informed him that a timely filed opposition was not considered in the order, that a motion for reconsideration was pending, and that accordingly no funds should be disbursed to Plaintiff pending resolution of the motion for reconsideration. Moments after this message from chambers Plaintiff appeared at the Clerk of the Court's office requesting that the Financial Manager turn over the $500 bond pursuant to this Court's August 18 order. The Financial Manager refused, stating that chambers had instructed him not to disburse the funds. The Financial Manager also stated that in the absence of a stipulated order exonerating a bond the Financial Manager is not authorized to turn over a bond prior to the running of a 30-day appeal period. After arguing with the Financial Manager Plaintiff left the Clerk of the Court's office. Plaintiff then wrote a letter to the Clerk of the Court demanding to know "what authority your office had to refuse to release my property." (Exhibit A).

Plaintiff returned to the Clerk of the Court's office on August

24 and demanded that the Financial Manager divulge the name of Judge Keep's law clerk. The Financial Manager would not do so. Plaintiff then wrote a letter to Judge Keep's law clerk dated August 24. (Exhibit B). In the letter Plaintiff demanded to know "the authority which permitted you to telephonically interfere with my property by eviscerating a 29 U.S.C. § 2042 order." Plaintiff further demanded that the law clerk "immediately ... give me your full name. I would also like to know whether you had any contact with Judge Rudi M. Brewster or anyone in his chambers, or any other person(s), related to your decision to telephone the head cashier and instruct him to interfere with release of my property." Finally, Plaintiff telephoned Judge Keep's law clerk, asserting that the August 24 letter was not intended to be a "threat," but that nevertheless, Plaintiff might sue the law clerk as he had sued Judge Brewster and Brewster's law clerk. Plaintiff intimated that a lawsuit would probably not be necessary if his bond were (sic) exonerated.

The Court issues the following order to emphasize that it would not have filed its August 18 order had it been aware that the Trust Defendants had submitted a timely opposition on August 15. Basic tenets of due process, as well as this Court's Local Rules regarding the right to file oppositions, require that the Court consider and address timely oppositions; it would be improper for the Court to knowingly ignore such submissions.[1] See Local Rule 7.1(e)(2). In addition "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders." Fed.R.Civ.P. 60(A). Finally, the Court has the inherent power "governed not only by rule or statute but by the control necessarily invested in courts to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases." Chambers v. NASCO, Inc., __U.S.___, 111 S.Ct. 2123, 2132 (1991).

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[1]Plaintiff argued in his August 23 letter to the Clerk of the Court as well as during his August 24 telephone call to Judge Keep's law clerk that the Trust Defendants "had no standing to file any opposition."

Considering that a lien itself can have the force of a court order, this Court, through its judicial staff, properly instructed the Clerk of the Court's office not to exonerate Plaintiff's bond pending resolution of whether a lien exists on the bond. The Court's actions here were proper, as they would be in any case in which clerical error materially affected a Court order. The Judge's staff may obviously assist in the proper management of the Court's affairs. The Court thus reiterates that it will not release Plaintiff's funds until the lien issue is resolved.

Finally, the Court finds that its March 8, 1994 order, prohibiting all oral or telephonic communication between the parties and the Judge's law clerks, should be modified. Counsel for the named Defendants, as well as the Trust Defendants, should no longer be prohibited from telephonically contacting chambers regarding scheduling and filing of motions and pleadings in this case. However, Plaintiff, who has again behaved abusively and in an intimidating fashion towards chambers staff and the Clerk of the Court's office, shall continue to be barred from orally or telephonically contacting chambers. Due to the evidently heated nature of the instant matter, and Plaintiff's propensity for threatening judicial staff with lawsuits, Plaintiff shall be required to direct his communications to chambers in writing only.

Accordingly, IT IS HEREBY ORDERED that the Court's August 18, 1995 order is VACATED.

IT IS FURTHER ORDERED that Plaintiff's $500 bond shall not be released pending resolution of the Trust Defendants' motion to reconsider.

IT IS FURTHER ORDERED that the Trust Defendants shall file and hand serve additional points and authorities in support of

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Even assuming arguendo that the Trust Defendants lack standing, the Court can reach a determination of the standing issue only after appropriate briefing, and must then explain its rationale for such a conclusion in a subsequent order. The Court may not simply bar the Trust Defendants from submitting an opposition, nor may the Court ignore the opposition, on the untested assumption that the Trust Defendants lack standing. finally, the Court cannot refuse to consider the opposition based solely on Plaintiff's ex parte representations.

their opposition to Plaintiff's application for release of his bond, as well as exhibit(s) evidencing the purported lien, on or before September 15, 1995.

IT IS FURTHER ORDERED that Plaintiff shall file any response on or before September 15, 1995.

IT IS FURTHER ORDERED that pursuant to Local rule 7.1(d)(1) the Court shall decide the instant motion on the briefs and papers submitted, without oral argument.

IT IS FURTHER ORDERED that the Court's March 8, 1994 order is modified to the extent that counsel for the named defendants and the Trust Defendants shall be permitted to telephonically contact chambers regarding the scheduling and filing of motions and pleadings in this case.

IT IS FURTHER ORDERED that, pursuant to the Court's March 8, 1994 order, Plaintiff shall not orally or telephonically contact chambers, and shall direct his communications to chambers in writing only.

IT IS SO ORDERED.

Filed: AUG 30 1995 Judith N. Keep

Chief Judge
U.S. District Court

Box 13543
La Jolla, CA 92039-3543
August 23, 1995
Ph. (619) 452-9537

Roberta Westphal
Clerk of the District Court
940 Front Street, Room 1160
U.S. Courthouse Bldg.
940 Front Street
San Diego, CA 92101-8900

Re: Civil Case No. 93-1857-K(AJB)

Dear Madam:
I am writing to memorialize events as they occurred in your office today. I appeared at approximately 10:00 A.M. and presented the cashier with Judge Judith N. Keep's order that you release to me the $500.00 which I posted as a bond pending my successful appeal in this case.

The head cashier told me he could not release it because there was a lien against it. I denied that. He then said Defendants (who lost on appeal) filed an opposition to release of the bond. I said it could not affect the order, and they had no standing to file any opposition. He said Judge Keep's law clerk called and told him to refuse to release the money to me. He also said he didn't have a taxpayer I.D. number. I offered him my social security number, and he then said he couldn't release the money for 30 days because the Defendants had to have thirty days to file an appeal.

I can't find any authority for your office's refusal to release the funds. I believe your only statutory authority when presented with such an order is to check the civil docket for valid encumbrances, and to release such funds immediately. Please inform me in writing what authority your office had to refuse to release my property.

Sincerely,
Lawrence Moore

A

Box 13543
La Jolla, CA 92039-3543
August 24, 1995
Ph. (619) 452-9537

Law Clerk (who refused to identify himself)
Chambers of Hon. Judith N. Keep
U.S. Courthouse Bldg.

940 Front Street
San Diego, CA 92189

Re: Civil Case No. 93-1857-K(AJB)

Dear Sir:
I appeared in the Clerk of Court's office on August 23, 1995 and presented the cashier with Judge Keep's order to release $500.00 which I posted as a bond pending my successful appeal in this case.

The head cashier said Judge Keep's law clerk told him Defendants opposed releasing it and to not release it (he also said there was a lien on the money (not true), he did not have my S.S. number (I offered it to him), and he couldn't release it for 30 days because Defendants had thirty days to file an appeal (none of the Clerk's business)). Please provide me with the authority which permitted you to telephonically interfere with my right to enjoy my property by eviscerating a 29 U.S.C. § 2042 written order.

I went back to the head cashier's office today and asked for the name of the law clerk who told him to interfere with my property. He spoke to you by telephone and you absolutely refused either to give him your name or permit him to give it to me, and instructed him to tell me to contact you by writing Judge Keep's chambers.

Please write to me immediately and give me your full name. I would also like to know whether you had any contact with Judge Rudi M. Brewster or anyone in his chambers, or any other person(s), related to your decision to telephone the head cashier and instruct him to interfere with release of my property.

Sincerely,
Lawrence Moore

B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 93-1857-K

ORDER GRANTING MOVANTS' MOTION FOR RECONSIDERATION

San Diego Electrical Health and Welfare Trust, San Diego Electrical Pension Trust, and San Diego Electrical Training Trust (the "Judgment Creditors") filed a motion for reconsideration of the Court's August 18, 1995 Order granting Plaintiff's ex parte application for release of his $500 bond.

FACTUAL BACKGROUND

On September 28, 1994 this Court granted Defendants' motion to fix security for costs, requiring Plaintiff to post a $500 bond prior to filing an appeal of this Court's judgment in this action. On October 17, 1994 Plaintiff posted the bond and appealed to the Ninth Circuit Court of Appeals. On July 24, 1995 this Court spread the mandate of the Court of Appeals, affirming in part and reversing in part this Court's judgment, and remanding in part for further proceedings.

On August 10, 1995 Plaintiff submitted an ex parte request for release of his security bond. On August 15, 1995 the Judgment Creditors submitted an opposition to Plaintiff's ex parte motion. The Judgment Creditors are the party defendants in Southern District Civil Case No. 91-1543-B before Judge Brewster. In their opposition papers the Judgment Creditors assert that they are valid judgment creditors pursuant to a $46,429.75 judgment against Plaintiff entered on October 3, 1994 by Judge Brewster. The Judgment Creditors further allege in their opposition that Plaintiff has not contributed any money in satisfaction of said judgment, and that on August 14, 1995 they filed a lien against the $500 bond at issue in the instant case.

The Clerk of the Court duly stamped the Judgment Creditors' opposition as "received" on August 15, but erroneously forwarded the papers to Judge Brewster's chambers on August

16. Judge Brewster and his staff were out of the District from August 16 through August 18 because Judge Brewster was sitting by designation on a Ninth Circuit appellate panel in San Francisco. On August 21 Judge Brewster's staff forwarded the opposition papers back to the Clerk of the Court with instructions to forward the papers to Judge Keep's chambers. On August 22 the Clerk's Office sent the opposition to Judge Keep's chambers.

Because the opposition papers had been stamped "received" rather than "filed," they were not entered in the Clerk of the Court's computer docketing system. Thus prior to August 22 this Court was unaware that an opposition had been submitted. On August 18 this Court therefore issued an order granting Plaintiff's ex parte application for exoneration of the bond on the erroneous assumption that there was no opposition thereto.

On August 23 the Judgment Creditors' counsel received a copy of the Court's August 18 order. Counsel then telephoned chambers to inquire why the August 18 order neither acknowledged nor addressed the Judgment Creditors' August 15 opposition. Judge Keep's law clerk then explained that Judge Keep's chambers had only received the opposition papers in the afternoon of August 22, was not previously aware that an opposition had been submitted, and had not considered the opposition in the August 18 order. Counsel then informed chambers that she would immediately file a motion for reconsideration, and did so on August 15, 1995.

On August 30, 1995 this Court issued an Order (1) vacating its August 18, 1995 Order, (2) ordering the Judgment Creditors to submit a supplemental brief by September 8, 1995; and (3) ordering Plaintiff to submit any response to the Judgment Creditors' supplemental brief by September 15, 1995. On September 6, 1995 Plaintiff filed a pleading styled "Plaintiff's Objections to an Order Filed on August 30, 1995 by the Presiding Judge." On September 8, 1995 the Judgment Creditors filed their supplemental brief. Plaintiff did not file a response to the supplemental brief.

DISCUSSION

This Court may reconsider its previously filed orders sua

sponte or upon motion. Fed.R.Civ.P. 60; Local Rule 7.1(i). Federal Rule of Civil Procedure 64 provides in relevant part that

> [a]t the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state in which the district court is held .... the remedies thus available include arrest, attachment, garnishment ... and other corresponding or equivalent remedies, however designated and regardless of whether by state procedure the remedy is ancillary to an action or must be obtained by an independent action.

Meanwhile, Cal.Civ.Proc.Code § 695.010(a) states that "[e]xcept as otherwise provided by law, all property of the judgment debtor is subject to enforcement of a money judgment." Thus the Judgment Creditors have a right to seek attachment of Plaintiff's property to satisfy the judgment they obtained in Judge Brewster's case pursuant to California state law. It is uncontroverted that no portion of the aforementioned judgment has been satisfied. Although Plaintiff has filed a notice of appeal as to the judgment he has not posted a bond to stay enforcement of the judgment pending appeal.

Judgment Creditors correctly assert that after the July 24, 1995 spreading of the Court of Appeals' mandate reversing in part this Court's ruling in the instant case, the $500 bond in this case was properly characterized as "property of the judgment debtor." Thus, on August 14, 1995, Judgment Creditors have submitted true and correct copies of the Writ of Execution, Notice of Levy, Memorandum of Garnishee, and the Process Receipt and Return. Plaintiff does not contest the validity of these documents.

Plaintiff's assertion that the Court has no "jurisdiction" to consider Judgment Creditors' opposition is meritless. To the contrary, the Court may not unilaterally disregard a lien against his property that was validly filed with the Clerk of the Court;

Judgment Creditors' opposition papers fairly apprised the Court of the existence of their lien, and the Court has properly taken judicial notice of the lien. Plaintiff has not argued, and the Court does not find, that his $500 bond is protected by any of the exemptions from execution enumerated under Cal.Civ.Proc.Code § 699.720. On the record before it, the Court knows of no reason why Judgment Creditors' lien should not be considered valid and enforceable.

Accordingly IT IS HEREBY ORDERED that Judgment Creditors' motion for reconsideration is GRANTED and Plaintiff's application for release of his $500 bond is DENIED.

IT IS FURTHER ORDERED that Judgment Creditors' levy shall proceed, and the $500 bond proceeds shall be disbursed to Judgment Creditors.

IT IS SO ORDERED.

Filed: OCT 20 1995 Judith N. Keep
Chief Judge
U.S. District Court

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Appeal No. 95-56701
D.C. No. CV-93-1857-K

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Judith N. Keep, Chief Judge, Presiding

Filed February 13, 1998**

Before: PREGERSON, CANBY, and LEAVY, Circuit Judges.

Lawrence Moore appeals pro se a district court order disbursing a $500 appeal bond to San Diego Electrical Health and Welfare Trust, San Diego Electrical Pension Trust and San Diego Electrical Training Trust ("trust defendants"). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Moore contends that the district court lacked jurisdiction to permit the trust defendants to execute their judgment for attorney fees against the $500 appeal bond because "[t]he filing of a timely and effective notice of appeal [from the district court's dismissal of Moore's action] divest[ed] the district court of jurisdiction."

This contention lacks merit. The district court's order permitting execution of the attorney-fee judgment against the $500 appeal bond was filed after this court had issued the

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir.R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a); 9th Cir.R. 34-4.

mandate, reversing the dismissal of Moore's action and remanding the case back to the district court. See Moore v. Local 569 of the Int'l Bhd. of Elec.Workers, No. 94-55876, 1995 WL 269341 (9th Cir. May 8, 1995).

Moore contends that the district court lacked any basis to deny his application for release of the appeal bond to him. We disagree. The district court properly denied Moore's application on the ground that the trust defendants had filed a valid lien against the bond. See Cal.Civ.Proc.Code § 708.410.

Moore contends that the district court lacked jurisdiction to reconsider its order which initially granted Moore's application for release of the bond. We disagree. Federal Rule of Civil Procedure 60 permits a district court to correct errors arising from oversight or omission. Here, the district court explained that reconsideration of Moore's application pursuant to Fed.R. Civ.P. 60 was appropriate because it had initially granted Moore's application on the erroneous assumption that no lien against the bond had been filed.

Finally, Moore's contentions regarding the application of the Southern District of California's Local Rule 40.1 and Moore's motion to recuse the district judge were disposed of in Moore v. International Bhd. of Elec. Workers Local 569, No. 94-55876, 1995 WL 269341, at #1 (9th Cir. May 8, 1995).

AFFIRMED.

UNITED STATED DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 87-0172-B

ORDER GRANTING MOTION TO CONFIRM ARBITRATOR'S AWARD AND JUDGMENT

The above captioned matter came on regularly for hearing before this court on defendant Fischbach & Moore's Motion to

Confirm Arbitrator's Award. No oral argument was heard. Upon consideration of the Motion, the Opposition, the Reply, and the record of this case, the Motion is granted.

1. Mr. Moore's reference to 29 U.S.C. Sec. 411(a)(4) is inapposite since Sec. 411 governs the bylaws and constitution of a Union, not the Inside Agreement at issue.

2. The court has previously ruled that Section 1.06 of The Inside Agreement is valid and applicable to Mr. Moore and has ordered the parties to comply with it. Accordingly, the arbitration committee had jurisdiction.

3. The attorney fees award does not violate public policy or the American rule against attorney fees since attorney fees are provided for by the Inside Agreement.

4. There was a full and fair hearing accorded to Mr. Moore. Mr. Moore was given an opportunity to be heard before the arbitration committee and to attack the reasonableness of the attorney fees. However, he declined to do so after having lost a challenge to the committee's jurisdiction. Furthermore, the proceedings were objectively fair. The fee request submitted by counsel for Fischbach & Moore was referred for evaluation to a retired Superior Court Judge, the Honorable Harold F. Wolters. Judge Wolters has had no prior connection with the parties. He independently found those fees to be reasonable as submitted.

5. Finally, Mr. Moore has waived any objections he might have against the award since he failed to bring a motion to modify or vacate the award within the applicable 100-day statute of limitations. See *Fortune, Alsweet & Eldridge, Inc. v. Daniel*, 724 F.2d 1355 (9th Cir. 1983).

Accordingly, IT IS ORDERED that the arbitrator's award of $224,140.01 in attorney fees and costs is confirmed, and that Judgment be entered thereon.

IT IS SO ORDERED.

JUDGMENT

Judgment in the amount of $224,140.01 is entered for Fischbach & Moore and against Lawrence Moore.

Filed: JUN 11, 1993 Rudi M. Brewster
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ORDER

On March 11, 1996, the parties in the above-captioned matter were called before this Court for a status hearing regarding several pending matters before this Court. No appearance was entered on behalf of plaintiff, Lawrence Moore. Norman Allenby, Esq. and Steven Sayler, Esq. appeared on behalf of defendant Fischbach & Moore. Melissa Cook, Esq, appeared on behalf of Trust Defendants. George de la Flor, Esq. appeared on behalf of himself. After consideration of the papers submitted and the oral arguments made, this Court: (1) AFFIRMS its earlier award of $512 in sanctions against plaintiff Lawrence Moore in Civil Case No. 87-0172; (2) DENIES plaintiff's motion in Civil Case No. 91-1543 to recuse this Court from further consideration of issues in this case; and (3) takes under consideration, for future decision on the papers submitted, plaintiff's motion to reconsider the Magistrate Judge's discovery order in Civil Case No. 91-1543. In addition, the Court orders the parties to appear before it on April 29, 1996 at 10:30 a.m. for a hearing to show cause as to why the funds already awarded to plaintiff in Civil Case Nos. 85-1719 and 87-0172, currently on deposit with the Clerk of the District Court, should not be distributed to plaintiff in order to preserve the interests of defendants who wish to file liens for attorneys fees against those awards. At the hearing on April 29, 1996 the motion for reconsideration filed by defendant George de la Flor, Esq., previously briefed by the parties, will also be heard.

IT IS SO ORDERED.

Filed: MAR 20, 1996 Rudi M. Brewster
U.S. District Judge

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Appeal No. 96-55629
D.C. No. CV-87-0172-B

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Rudi M. Brewster, District Judge, Presiding

Filed February 13, 1988**

Before: PREGERSON, CANBY, and LEAVY, Circuit Judges.

Lawrence Moore appeals pro se a district court order imposing sanctions of $512 pursuant to Fed.R.Civ.P. 11 for filing a frivolous motion. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, see Buster v. Greisen, 104 F.3d 1186, 1189 (9th Cir.), cert. denied, 118 S.Ct. 441 (1997), and we affirm.

While an earlier appeal in this case was pending, Moore filed a motion with the district court for permission to amend his complaint. The district court found that the motion was frivolous and imposed sanctions of $512 pursuant to Fed.R.Civ.P. 11.

On appeal we concluded that the district court did not abuse its discretion by imposing sanctions. See Moore v. Local 569 of the Int'l Bhd. of Elec.Workers, 53 F.3d 1054, 1058 (9th Cir. 1995).

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*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided for by 9th Cir.R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a); 9th Cir.R. 34-4.

However, we noted that the sanctions award had been made pursuant to a version of Rule 11 which, when the district court imposed sanctions, made sanctions mandatory. See id. We vacated the award of sanctions and remanded to give the district court the opportunity to exercise its discretion under the present version of Rule 11, which makes an award of sanctions discretionary. See id.

On remand, the district court imposed the same sanction of $512. As before, we are unable to conclude that the district court abused its discretion in making this award. See id.

Moore also contends that the district judge erred by failing to recuse himself pursuant to 28 U.S.C. § 455. We disagree. A denial of a motion for recusal is reviewed for an abuse of discretion. See Mayes v. Leipziger. 729 F.2d 605, 607 (9th Cir. 1984). Our review of the record reveals no basis for questioning the district judge's impartiality. See Liteky v. United States, 510 U.S. 540, 555 (1994).

AFFIRMED.

Office of the Clerk
United States Court of Appeals
for the Ninth Circuit
121 Spear Street, P.O. Box 193939
San Francisco, CA 94105-3939

Filed: September 16, 1993

USDC, San Diego
Southern District of California (San Diego)
United States Courthouse
940 Front Street
San Diego, CA 92189

C.A. NO.	TITLE	AGENCY/ D.C. NO.
90-55557	Moore v. IBEW Local 569	CV-85-1719-B
90-55558	Moore v. IBEW Local 569	CV-85-1719-B
90-55559	Moore v. IBEW	CV-85-1719-B
91-55411	Moore v. IBEW Local 569	CV-85-1719-B

Dear Clerk:

The following document(s) in the above listed cause(s) is (are) being sent to you under cover of this letter. Counsel are being served with a copy of this letter only.

[X] Certified copy of the Decree of the Court

[ ] Judgment of the National Labor Relations Board

[ ] Certified copy of the Entry of Dismissal

The record on appeal will follow under separate cover.

Please acknowledge receipt on the enclosed copy of this letter.

Very Truly Yours,

Cathy A. Catterson
Clerk of Court
By: Sandra Wong
Deputy Clerk

Enclosure(s)
ALL COUNSEL WITHOUT ENCLOSURES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CASE NO. 87-0172-B

Transcript of Proceedings Before
Judge Rudi M. Brewster
SAN DIEGO, CALIFORNIA MONDAY, NOV 1, 1993
(Call to order of the Court.)

MR. LEVY: Good morning, your Honor. Lewis Levy on behalf of IBEW 569. It's been awhile. Nice to see you again.

THE COURT: Nice to see you, Mr. Levy.

MR. SAYLER: Good morning, your Honor. Steve Sayler for Fishback and Moore (phonetic).

MS. MESSERSMITH: Good morning. Jennifer Messersmith on behalf of the IBEW.

MS. COOK: Good morning, your Honor. Melissa Cook on behalf of the San Diego Electrical Industry Trust Funds.

THE COURT: Good morning.

MR. MOORE: Lawrence Moore appearing on behalf of himself, your Honor.

THE COURT: Good morning, Mr. Moore.

We have at least three motions and we may have some other motions that will have to be resolved this morning.

MR. MOORE: As far as I know, your Honor, there's only one motion here and it's my motion to vacate a judgment on behalf of Fishback and Moore of attorney's fees.

THE COURT: Well, you know, that may be right because the other motion may be moot. I'm not sure. But let's just take it one step at a time and see what we've got.

First of all, you're right. I think the first motion that needs to be talked about is the motion for relief from the judgments awarding attorney's fees to Fishback and Moore.

. . .

MR. MOORE: For clarification, your Honor, we're speaking about case number 87-0172.

THE COURT: I think that's right.

The Court has reviewed -- re-reviewed all the former as

well as present papers filed by the Plaintiff and the Court confirms and affirms the conclusions that it made before and denies the motion for relief from the judgments or orders which award attorney's fees to Fishback and Moore.

So, the motion by the Plaintiff for relief from those judgments or orders is denied.

Now, with respect to the motion for Plaintiff's exemption from lien --

MR. MOORE: I don't have a claim for exemption.

THE COURT: Well, maybe not. Let me just get this out and clarify where we are and where we're going.

There was a motion filed by the Plaintiff for exemption from -- what the Plaintiff regarded -- what the Plaintiff referred to as a, quote, "ostensible," close quotes, lien.

When the Plaintiff filed this motion for exemption, Fishback and Moore responded with a motion to withdraw their lien. The Plaintiff asserted in his motion for exemption -- he asserted among other things that the lien wasn't valid anyway.

. . .

MR. MOORE: That's not exactly my argument, your Honor. My argument is they don't have any standing because they're not a creditor, a judgment creditor ....

THE COURT: No, the situation we have at the present time now is that the -- the lien that's been filed by Fishback and Moore is withdrawn. I earlier stayed the judgment for 224 thousand whatever it is. There is no judgment at the present time for the $512.

MR. MOORE: Correct.

THE COURT: I now lift -- the reason I stayed it was because of the pending motion for relief from it. That's why I stayed it. The Plaintiff had filed a motion for relief from it which I hadn't had a chance to read. For that reason I stayed it. Now I rule on it. I'm now lifting the stay.... As of today you will have two judgments with the clerks -- filed with the clerk and served on the parties. That's where you are. You have no lien. You have no written attachment. You have nothing except two judgments as of today.

. . .

THE COURT: So, is there anything else I need to do this

morning?

MR. MOORE: That's it, your Honor. Thank you very much.

. . .

THE COURT: Well, the only thing that -- I'm not aware of anything else that's before the Court.

MR. MOORE: Thank you, your Honor.

. . .

THE COURT: I'm not aware -- in the law I'm not aware of any other way that this Court could stay the disbursement of the fund, $70,000, in the absence of either a writ or a lien.

. . .

MR. MOORE: Well, since that's clear, your Honor, can I ask you orally to shoot an order down to the clerk to release that money to me, please?

. . .

MS. COOK: Yeah, but, your Honor, Fishback and Moore definitely cares. That's a lot of money to them.

MR. MOORE: Well she's not Fishback and Moore's attorney, your Honor and she has no standing to make any voice here.

MS. COOK: Excuse me, Mr. Moore. My clients also have a lien on this money.

MR. MOORE: And that's another misrepresentation.

THE COURT: I wasn't aware of that. If you've got a lien on the money, then obviously there's a lien on the money.

MR. MOORE: How can everybody come up here and say they have all these liens, your Honor?

THE COURT: I'm not aware -- I mean, I don't know. She's telling me she has a lien.

MS. COOK: I absolutely have a lien on the money. There is a motion Mr. Moore has calendared for November 22nd with regard to that lien. My lien has been on file for several months now, your Honor.

THE COURT: For how much money?

MS. COOK: It's $1,255.

THE COURT: $1,255? Well, if that's true, then maybe that would affect all --

MR. MOORE: Well, let me ask you something specifically from my point of view, your Honor. How does that affect

whether or not you're going to send down the order to release the bond? It doesn't affect it at all, right? It has no effect on it.

. . .

THE COURT: It's a lien for $1,200. That wouldn't tie up $70,000.

. . .

THE COURT: Let me just inquire, did Local 569 -- did Local 569 post a $70,000 bond in case number 85-1719?

MR. LEVY: Yes, we did.

THE COURT: Has that appeal been determined?

MR. LEVY: Yes, it has.

MR. MOORE: Yes, it has, your Honor. The mandate was received by the Court over two months ago.

THE COURT: Well, has Defendant satisfied that judgment?

MR. MOORE: No, they haven't, your Honor.

MR. LEVY: The bond is still sitting with the clerk.

THE COURT: No, I didn't ask about the bond. Has the Defendant satisfied the judgment? The bond, you see, just backs up the Defendant.

MR. LEVY: The judgment has not been satisfied because the proceeds of the bond have not been released towards satisfaction of the ultimate judgment.

. . .

MR LEVY: My understanding was that we were going to visit the issue of whether or not Fishback's judgment for the attorney's fees in the 87 case was valid and whether or not in light of that judgment the funds which are being held by the Court, which were the supersedeas bond for the appeal in the 85 case would then be released to Fishback as a partial satisfaction of the attorney's fees which they had been awarded in the 87 case.

MR. MOORE: What's the understanding based on, your Honor?

MR. LEVY: Mr. Moore, I don't have to answer to you and I'm not going to answer to you.

In light of the discussion that has gone her, if, in fact, the bond is now ripe for release because there's no lien by Fishback, the mandate has been issued, there's no satisfaction of the judgment, I think we have some other issues that we need to

talk about.

Principally, there are some offsets that I believe Local 569 has against that judgment which exists in favor of Mr. Moore.

MR. MOORE: I'm going to ask you to end this hearing, your Honor.

. . .

MS. MESSERSMITH: I would add, if I may for just a moment, your Honor -- I represent the IBEW. We have a cause of issue in the 85 case for $623 that we would also see as an offset to those funds.

. . .

THE COURT: Okay. Now, have you filed any kind of a writ of attachment or any kind of a lien on your judgment?

MR. MOORE: No, they haven't.

MR. LEVY: No, we have not.

MS. MESSERSMITH: Excuse me, the IBEW on Friday filed a lien.

. . .

MR. MOORE: The answer is no.

. . .

MR. MOORE: Your Honor, I'm going to object to this entire exchange.

THE COURT: Just a minute.

MR. MOORE: No, your Honor. I can't keep saying -- none of this stuff is before the Court.

. . .

THE COURT: Just answer that yes or no.

MR. LEVY: No, I have not, and I will tell you why I haven't.

. . .

THE COURT: If there's no lien -- Mr. Lewis, if there's no lien, the fact that you have a judgment doesn't tie up any money. You can't walk into a department -- you can't walk into a bank, let's say, and show them your judgment and say to the banker, "I've got this judgment so I want you to hold this money." You can't do that.

. . .

But it seems to me that there's got to be something given to a clerk so that the clerk gets put on notice of something like that.

Otherwise, the clerks wouldn't know when to give money and when not to give money.

Therefore, it seems to me that if there's no lien against the fund, then the fund should be released to the owner of the fund if the judgment is final and you've all told me that the judgment is final, except that Mr. Moore is going to make a petition for writ of certiorari, but that doesn't stop the money from flowing.

The only thing that stops the money from flowing is either a writ of attachment or a lien. That's my understanding. That's the only thing that can stop it and at the present time there are two lawyers in this courtroom that have told me that there are liens filed. One is for $1200 or so, and one is for $600 or so.

Mr. Moore tells me we're talking about a fund of $70,000.

MR. MOORE: That's correct your Honor. There are no liens.

THE COURT: So it looks like to me that that money may be tied up to the extent of $1200, plus $600 -- you know, less than $2,000, but I don't know that would tie up the rest of the money.

MR. MOORE: It's gone beyond reason. I'm going to object to this entire thing. This is absolutely nuts for this guy to pull this stuff now.

. . .

MR. MOORE: For the record your Honor, Ms. Messersmith, when she just said we, she meant Fishback and Moore and she represents the IBEW. So she has no claim on -- no standing to argue on behalf .... So why is she talking on behalf of Fishback and Moore then, your Honor? Can we at last have her shut up on Fishback and Moore's stuff?

. . .

THE COURT: I don't think there's anything else we can do this morning....

MR. SAYLER: Your Honor, there are moving papers that were filed with the clerk of the court asking that if this Court was going to be inclined to release any monies tomorrow, that I be given the opportunity to take an emergency writ up to the Ninth Circuit.

So that would be my second request, to at least then have 24 hours to put something together on that.

MR. MOORE: What's he moving now, your Honor? He's making a motion before the Ninth Circuit here in District court?

MR. SAYLER: Your Honor, here's my brand new notice of claim of lien that I'm handing to Mr. Moore and I will file this with the Court.

MR. MOORE: Now I've got a piece of note paper here that says, "Notice of Lien," no date, just the case number, and his signature on a piece of paper.

THE COURT: Let me say this to you. On the second request -- the second request, which I understand what you're saying, that you are taking an emergency writ to the Ninth, that would be to get a writ as to whether the ruling by the Court on your first request was reversible or not, right?

. . .

MR. SAYLER: Your Honor, here I have a little better one that I resigned and I'll serve on him right now and I'll refile that with the Court in one moment.

. . .

MR. MOORE: I'm going to object to this and I'm going to ask the Court to please stop those individuals from coming over here and serving me with this junk. The proof of service is also dated June 22, 1993. The previous one on the scrap of paper has no proof of service.

. . .

THE COURT: Let's just wrap this up.

MR. MOORE: Okay, your Honor.

THE COURT: Just a minute. The motion that the Court heard this morning was a motion in case number 87-0172-B. It was a motion by the Plaintiff for relief from judgments or orders awarding attorney's fees to Fishback and Moore.

That motion the Court has ruled on and has denied it.

. . .

MR. MOORE: Your Honor, could I request the Court -- while the Defendants are looking for that, could I request the Court to issue the order releasing the bond to me today, to make that order nunc pro tunc to the date of receipt of the mandate of the appellate court, please?

. . .

I'd also like to make the record that Union Defendants and Fishback & Moore are working together over there to produce the phony writs or liens, or whatever, that they're handing me,

. . .

THE COURT: I think that I have ruled on the two matters which were properly noticed for me to rule on this morning and that's really all that I can do this morning. The rest of this has been informational background, but that's all I can do right now.

. . .

The only problem that really is before us right now is what is going to happen to the $70,000 at the clerk's office....

. . .

MR. MOORE: Let me correct the record.

THE COURT: I'm concerned about that.

MR. MOORE: The court hasn't blocked anybody and they haven't filed them, nor could the Court block them from filing them. They've got an absolute right to file them and they're not filed. That's a matter of record. There's nobody been blocked here. They've called up the clerk within the last week and asked for a motion hearing date. That has nothing to do with my application for release of the bond dated September 13, which was after the writ of mandate, and I'm the only party who has been prejudiced here.

I'm asking you to make the order releasing the bond.

THE COURT: That's a point -- I thing that's a valid point because I remember vaguely receiving that. There have been so many documents. I think I received that and I didn't act on that because of these pending motions. So had I acted on that the funds would have been released then.

. . .

THE COURT: Okay. Gentlemen and ladies, here's what I'm going to do. I appreciate your patience and it's getting late. I'm going to deny Mr. Sayler's request to rescind his withdrawal of the lien because he gave notice of that and I think that Plaintiff, it could be argued, made his position, made his decisions as to what to do, relying on that withdrawal.

I don't think that I could now come around behind him and reinstate it. I think that would prejudice him.

Now, with respect to your second request, that is to stay the bond for an emergency writ to the Court of Appeal, on whatever grounds you feel you have -- here's what I think that I should do on that.

I should grant the stay for the purpose of taking your writ, but it's with the understanding, that the rights of the parties to that money, the $70,000, will be determined as of their rights as of this moment, which 12:45 p.m. on Monday, November 1, 1993.

. . .

Now, if the Court of Appeal -- if the Court of Appeal affirms these rulings that I've made this morning in your emergency writ, Mr. Sayler, then, since I'm going to send down judgments this afternoon for Fishback and Moore and I'm sure that Mr. Moore is going to go down and request withdrawal of his money -- his request -- I mean, all he's got to do is walk out of here and make his request.

MR. MOORE: Now your Honor, that's not true. I've already done that and they said they have to have an order from you.

THE COURT: Okay. But you've made the request in open court. What I'm trying to say to you is, I think that the rights will flow depending on what the Court of Appeal does.

The Court of Appeal, in other words, it seems to me, will have to find that through some kind of equity or estoppel or whatever, that the Plaintiff should be stayed, then that's going to be the lynch pin that does it.

But if the Court of Appeal affirms, then it seems to me that the only things that are going to stop the money from flowing are those two liens.

. . .

MR. SAYLER: Now, your Honor, what Mr. Moore has been trying to do this morning is then -- he already filed the written application to have those funds released. Now what he's doing today with no notice, an oral argument, is asking the Court to immediately release it when there's something --

MR. MOORE: I am not doing anything today that I have not done for two months, your Honor.

. . .

THE COURT: Just a minute. Here's what I'm concerned about. I stayed the judgments -- I stayed the judgments. You only have one judgment. The other is an order.

MR. SAYLER: Right.

THE COURT: I stayed that judgment a month or two ago because Mr. Moore filed a motion for relief from those

judgments.

MR. MOORE: Correct.

THE COURT: Had I not stayed those judgments, the judgments would have been, presumably, executed on.

. . .

MR. MOORE: Hold it now. You're talking about a stay in a completely different case affecting my application for release of the bond in this case?

THE COURT: Your motion this morning is a motion under 87-0172 for relief from the judgment of Fishback and Moore. I stayed that same judgment on June 23 to permit you to make that motion.

MS. MESSERSMITH: Can we hear the Court's ruling?

MR. MOORE: I've got an application here for release of the bonds in case number 85-1719 that the Court has had since September 13 and today you're giving them a stay.

. . .

And they're not a party to case number 85-1719. They have to perfect any claim against my judgment in 85-1719 through normal channels.

MR. LEVY: Your Honor, in fact, there is an opposition to the release of the funds by Mr. Moore pursuant to his ex parte request of September 13th. On September 18 I filed a document with this Court entitled, "Opposition of Defendants. IBEW Local 569 ex parte motion of Plaintiff Lawrence Moore to release supersedeas bond."

That document basically attaches the bill of costs, which I discussed earlier, and also referenced a third party lien of L&B Electric, who is not represented here at the present time.

MR. MOORE: They opposed my request for release of the bond. What difference does that make?

MR. LEVY: Mr. Moore, please, is it possible to have a human discussion in this courtroom without interruption?

MR. MOORE: I don't think it is because you have no standing to be here in any case. None of you people have any standing to be here on the two motions that the Court has said were before him.

. . .

THE COURT: I think that the ruling has to be -- this is not

uncomplicated, at least for the Court. It's not uncomplicated.

The ruling has to be that the only holds on the $70,000 right now are the lien of the trust and IBEW....

. . .

But the problem is -- the problem is, Mr. Sayler, the Court on its motion has an obligation to life any stay on any public money that belongs to parties if there's nothing against the funds.

I mean, there's no -- the court has no basis to hold a lien on property in the clerk's office unless there's some legal claim against them and the only claims against the funds right now are the two liens which I've identified.

MR. MOORE: Alleged claims, and they were -- there's no evidence that any of those were there on September 13th.

. . .

THE COURT: This afternoon I intend to send the clerk -- let me say this. If you want to take a writ on this, I will stay -- I will file my release of that funds, except for the two liens that are filed against it -- I will file that by 4:00 o'clock. But let me say again, the writ is going to get this affirmed. If my order is affirmed, the rights of the parties flow as of 12:45 today.

If the court is overruled or if it's stayed by the Court of Appeal, let them unsnarl it.

. . .

Court's in recess. I've told you all I can tell you. You've got until 4:00 o'clock.

. . .

MR. SAYLER: Can I not go down right now? I've served him with my notice of lien. Can I not refile it with the Court now that you've reverified this?

MR. MOORE: Your Honor, he's asking the Court for advice on how to file a lien.

THE COURT: No, I said your rights are as they were as of 12:45. The only relief you can get from this order is to get the circuit to reverse the order of this Court and I'll give you until 4:00 o'clock to get the circuit to stay -- because I won't file these papers until 4:00 o'clock. So you've got until 4:00 o'clock. Because they close at 4:00 o'clock. That's why I'm saying 4:00 o'clock.

MR. SAYLER: Your Honor, I have until -- but, your Honor,

by 4:00 o'clock I don't have an opportunity to get to the Ninth Circuit by 4:00 o'clock.

THE COURT: They're right here in this building. The circuit clerk is right downstairs.

MR. SAYLER: I understand. But I can't get my papers together by that point in time, your Honor -- by 4:00 o'clock today.

MR. MOORE: They've got 34 attorneys here.

MS. MESSERSMITH: Your Honor, please be reasonable. You are asking him to walk away from $70,000. I think he deserves some reasonable period of time to get his papers together.

MR. MOORE: That's reasonable? That's emotional, your Honor. That's not reasonable.

MR. SAYLER: Your Honor --

THE COURT: Just a minute. Maybe you're right. The rights are going to vest as of 12:45, so giving you additional time isn't going to effect the Plaintiff. It only takes the money away for a half day more. So, his rights are vested as of 12:45. So giving you an extra day to bring your writ isn't going to affect his rights at all. His rights vest as of 12:45 today.

If the Court's order is affirmed, the fact that you took an extra day to file the writ isn't going to change anything. So, I'll give you to 4:00 o'clock tomorrow.

. . .

MR. MOORE: Okay. Your Honor, can I ask you how their request to delay your action on releasing that bond to me as per my September 13, 1993 order got before you today?

THE COURT: Because all parties are before me in court.

MR. MOORE: And that's it.

THE COURT: The parties are here.

MR. MOORE: So there's no noticed motion or anything.

THE COURT: That's right. Mr. Moore, I don't understand you. I mean, you've won the day. You've won the issue. The money, except for the two liens that were always on file -- my order is that it's yours.

MR. MOORE: I haven't won today. You've said that to me for three years and I don't have a nickel yet.

THE COURT: Well, I can't pay the money. I can just enter

the judgments.

MR. LEVY: Your Honor, the issue of the offsets was raised in my opposition to Mr. Moore's ex parte motion of September 13th for release of the bond.

MR. MOORE: What difference does that make?

MR. LEVY: It makes a lot of difference to me and my client.

THE COURT: Well, show my clerks what those papers are so she can get them out -- so she can get our copies of them out. If you had an objection based upon offset, and maybe if under the law you're entitled to offset, that might offset a few hundred dollars more, but you're still only talking --

MR. MOORE: They don't have a lien, your Honor. How can someone --

MR. LEVY: Your Honor, there's approximately $18,000 in costs.

THE COURT: Show them what you filed.

MR. MOORE: That money will be back before you again.

(Proceedings concluded at 1:10 p.m.)

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Karen Johanson	11-10-93
Transcriber	Date

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 87-0172-B

ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENTS OR ORDERS AWARDING ATTORNEYS FEES TO FISCHBACH & MOORE, INC.; LIFTING STAY; DENYING AS MOOT FISCHBACH & MOORE'S REQUEST FOR 54(b) JUDGMENT; AND JUDGMENT ON ORDER AWARDING FISCHBACH & MOORE 512.50 FOR ATTORNEYS FEES

On November 1, 1993, plaintiff's motion for relief from judgments or orders awarding attorneys fees to Fischbach & Moore, Inc., was heard before the Honorable Rudi M. Brewster. Lawrence Moore appeared for himself; Steven C. Sayler, Esq., appeared for defendant Fischbach & Moore, Inc. Upon consideration of the parties' papers, the court hereby orders the following.

1. Plaintiff's motion for relief is denied;

2. The court's July 21, 1993, order staying the court's June 11, 1993 judgment awarding Fischbach & Moore, Inc. attorneys fees in the amount of $224,140.01, and staying the court's June 23, 1993 order awarding Fischbach & Moore, Inc. attorneys fees in the amount of $512.50, pending resolution of plaintiff's motion for amendment or alteration of the attorneys fees awards is hereby lifted; and

3. Fischbach & Moore, Inc.'s request for entry of 54(b) judgment in the amount of $224,652.61 is DENIED as moot. The court's June 11, 1993 judgment awarding Fischbach & Moore, Inc. attorneys fees in the amount of $224,140.01 explicitly states that it is a judgment.

JUDGMENT

Furthermore, the court hereby enters judgment for Fischbach & Moore, Inc. in the amount of $512.50 for attorneys fees awarded in the court's June 23, 1993 order.

IT IS SO ORDERED.

FILED: NOV 2 1993

RUDI M. BREWSTER
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B

ORDER DISBURSING REGISTRY FUNDS; DENYING PLAINTIFF'S OBJECTIONS TO HEARING DATE; DENYING FISCHBACH'S MOTION TO INTERVENE; DENYING FISCHBACH'S MOTION FOR A STAY; DENYING FISCHBACH'S WRIT OF MANDAMUS ARGUMENT; DENYING 91-1543-B(M) UNION AND TRUST DEFENDANTS' REQUEST FOR SANCTIONS; SCHEDULING HEARING TO DETERMINE AMOUNT OF ATTORNEY'S LIEN; AND DENYING PLAINTIFF'S MOTION FOR COURT TO RECUSE ITSELF

On December 1, 1993, a hearing was held before the Honorable Rudi M. Brewster to determine to whom the court should disburse $70,000 in registry funds, plus interest, which were deposited with the court by Local 569, and to determine other miscellaneous matters, some of which pertain to Cases No. 87-0172-B(M) and 91-1543-B(M). Lawrence Moore appeared for himself; Steven C. Sayler, Esq., appeared for Fischbach & Moore, Inc.; Jennifer T. Messersmith, Esq., appeared for IBEW; Melissa W. Cook, Esq., appeared for the Union and Trusts defendants in Case No. 91-1543-B(M); Lewis N. Levy, Esq., appeared for Local 569, Heisler and flowers; George de la Flor, Esq., appeared for himself; and Karl A. Rand, Esq., appeared for L & B Electric, Inc. This order pertains to Case No. 85-1719-B(M) only; the court has issued separate orders for motions brought at this hearing in Cases No. 87-0172-B(M) and 91-1543-B(M).

Preliminarily, the court notes that plaintiff has submitted an ex parte request for the presiding judge to recuse himself for partiality. The court DENIES plaintiff's motion. The following matters are properly before the court:

I. **Disbursement of Registry Funds**

In its order of November 2, 1993, the court asked all parties interested in the registry fund to submit motions, and asked Local 569 to show cause why plaintiff should not receive

$16, 328.84 in offsets claimed by Local 569. Moving and responding papers were submitted by all parties who appeared at the hearing as stated above.

The court finds that:

A. On March 20, 1990, plaintiff was awarded an amended judgment of $66,156.31 in damages against defendants Local 569, Heisler and Flowers.

B. On March 8, 1990, plaintiff was awarded $4,797.92 in costs against defendants Local 569, Heisler and Flowers.

C. On November 7, 1990, plaintiff was awarded $403.44 in costs against defendants Local 569, Heisler and Flowers.

D. In total, plaintiff recovered a money judgment of $71,357.67 against defendants Local 569, Heisler and Flowers.

E. As a condition of its stay pending appeal, Local 569 posted a $70,000 bond with the court. The funds have been earning interest at the average rate of 6% per annum since March 20, 1990. Local 569 still owes plaintiff an additional $1,357.67 to cover the entire judgment, plus interest on this amount, calculated at 6% per annum. The court calculates interest at $.23 per day ($1,357.67 x .06 divided by 360 days per year) for 1,366 days (March 20, 1990 through the filing date of this order, December 15, 1993).[1]

Total interest is $314.18. Therefore, aside from the $70,000 already posted, Local 569 owes Moore $1,671.85.

F. The court also awarded costs to Local 569 and against plaintiff; $2,180.84 was awarded to Local 569 March 8, 1990, and $14,148 was awarded to Local 569 on April 29, 1993. The court is satisfied that the Clerk of the Court properly awarded Local 569 $14,148 in costs on appeal, as Local 569 timely served plaintiff notice of its bill of costs filed with the district court and plaintiff failed to appear to oppose it.

G. In total, Moore owes Local 569 $16,328.84, and Local 569 owes Moore $1,671.85. As Local 569 and Moore are mutual debtors and creditors, equitable offset is an appropriate remedy. See 8 Witkin, California Procedure 3d, Enforcement

[1] The court takes judicial notice that banks commonly use a 360-day year for calculating interest, and adopts this measure in calculating interest for the purposes of this order.

of Judgment § 461 (1993). Therefore, Moore owes Local 569 a net total of $14,656.99.

H. The court awarded $626 in costs to IBEW on November 6, 1990.

I. The Ninth Circuit affirmed this court's judgment, which became final when this court spread the Ninth Circuit's mandate, on September 27, 1993.

J. In Case No. 86-0407-K(CM), the court awarded $612.57 in costs to L & B Electric, Inc., and against Moore on June 1, 1987, and awarded $102 in costs to L & B Electric Inc., and against Moore on May 12, 1988 -- a total award of $714.57. This case was affirmed on appeal in a judgment entered June 20, 1988.

K. In Case No. 91-1543-B(M), the court awarded $1,255 in attorneys fees to the Union and Trusts defendants and against plaintiff Moore on April 27, 1993.

L. In Case No. No. 87-0172-B(M), the court awarded an attorneys fees judgment of $224,140.01 to Fischbach & Moore, Inc., and against plaintiff Moore on June 11, 1993.

M. Until he withdrew sometime in 1989, George de la Flor, Esq., represented plaintiff in the present action. On October 29, 1988, plaintiff and Mr. de la Flor entered into a contract which specifically provided, "Attorney shall have a lien on any settlement, award, verdict or judgment obtained in this matter." On March 9, 1990, Mr. de la Flor filed a notice of attorney's lien in this action. On November 15, 1993, de la Flor filed a motion for distribution of his lien, claiming that he performed services valued at $17,500 in this action. The court finds the lien to be a valid contractual attorney's lien. However, plaintiff disputes the fee amount. As to fee disputes, De la Flor and Moore's contract provides:

> Any dispute between ATTORNEY and CLIENT as to the reasonable value of ATTORNEY'S services (in the event of withdrawal or discharge) . . . shall be arbitrated under the provisions of the State Bar Fee Arbitration Program set forth in sections 6200-6206 of the California Business and Professions Code.

Cal. Bus. & Prof. Code § 6200 states, "Arbitration under this

article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client." Therefore, as the arbitration provision of the contract is governed by Cal. Bus. & Prof. Code § 6200 the court finds that plaintiff has the choice whether to arbitrate a fee dispute with Mr. de la Flor. Plaintiff has notified the court that he chooses to litigate this dispute in court. Therefore, the court hereby schedules a hearing for January 7, 1994, at 8:00 a.m. in courtroom two. Plaintiff's opposition shall be served and filed on or before December 15, 1993, at 5:00 p.m. Mr. de la Flor's reply shall be served and filed on or before December 22, 1993, at 5:00 p.m., and may be served on plaintiff by depositing it in the mail on that date.

N. On October 28, 1993, IBEW filed a notice of lien in this action under Cal. Civ. Proc. Code ("CCP") § 708.410. Section 708.410 states:

> (a) A judgment creditor who has a money judgment against a judgment debtor who is a party to a pending action or special proceeding may obtain a lien under this article, to the extent required to satisfy the judgment creditor's money judgment, on both of the following:
> (1) Any cause of action of such judgment debtor for money or property that is the subject of the action or proceeding.
> (2) The rights of such judgment debtor to money or property under any judgment subsequently procured in the action or proceeding.
> (b) To obtain a lien under this article, the judgment creditor shall file a notice of lien and an abstract or certified copy of the judgment creditor's money judgment in the pending action or special proceeding.
> (d) for the purpose of this article, an action or special proceeding is pending until the time for appeal from the judgment has expired or, if an appeal is filed, until the appeal has been finally determined.

As the appeal in this action was "finally determined" on September 27, 1993, IBEW's lien was filed when the action was

no longer pending. Therefore, IBEW's lien in invalid under this section. Furthermore, IBEW is not entitled to an equitable offset because IBEW is not plaintiff's debtor. See 8 Witkin, California Procedure 3d, Enforcement of Judgment § 461.

O. On July 27, 1993, the Union and Trusts defendants in Case No. 91-1543-B(M) filed a notice of lien under CCP § 708.410 in Case No. 91-1543-B(M) for $1,255. As this notice of lien was not filed in the 85-1719-B(M) case, this lien is invalid under CCP § 708.410.

P. On February 1, 1990, L & B Electric, Inc., filed a notice of lien under CCP § 708.410 for $793.77, which it believed represented the principle sum of $714.57 plus interest. The court is satisfied that the lien complies with the requirements of CCP § 708.410 because (1) attached to the lien is a certified copy of the Ninth Circuit's judgment affirming the district court's judgment in that case, as well as copies of L & B's cost awards, and (2) the lien was filed before September 27, 1993, when this action was still pending. As L & B's costs were affirmed on June 20, 1988, the court hereby finds that interest should have been calculated at 6% per annum from that date. The court calculates interest at %.12 per day ($714.57 x .06 divided by 360 days per year) for 2,004 days (June 20, 1988 through the filing date of this order, December 15, 1993). Total interest is $240.48. Therefore, Moore owes L & B Electric, Inc., $955.05.

Q. On June 23, 1993, Fischbach filed an amended notice of lien in this action under CCP § 708.410 for $226,341.01. However, on October 21, 1993, Fischbach withdrew its lien. Therefore, this lien is invalid.

R. On November 1, 1993, Fischbach filed an amended notice of lien under CCP § 708.410. As this lien was filed after September 27, 1993, it is invalid.

S. On November 2, 1993, Fischbach filed a writ of execution with the clerk of the court for $224,140.01 plus interest. The court hereby finds the writ to be a valid execution lien under CCP § 697.710, except for its calculation of interest. The court calculates interest at 6% per annum from June 11, 1993, or $37.36 per day ($224,140.01 x .06 divided by 360 days per year) for 203 days (June 11, 1993 through the filing date of this order, December 15, 1993). Total interest is $7,584.08.

Therefore, as of December 15, 1993, Moore owes Fischbach $231,724.09 under Fischbach's writ of execution.

T. On November 24, 1993, Fischbach filed a notice of judgment lien on personal property under CCP §§ 697.510 and 697.550. Under § 697.530, cash and deposit accounts do not qualify as "personal property." See also Legislative Committee Comment to § 697.530 (Deering 1983). Therefore, this lien is invalid.

U. An attorney's lien which has been created by contract is effective as of the date of the contract and has priority over a § 708.410 lien filed after the date of the contract. Cappa v. F & K Rock & Sand, Inc., 203 Cal.App.3d 172, 174-6 (Cal.Ct.App. 1988); see also Cetenko v. United California Bank, 30 Cal.3d 528, 530 (Cal. 1982). All else being equal, statutory liens filed on the same property have priority according to the time of their creation, on a first come, first served basis. Cal.Civ.Code § 2897. However, "as between a statutory lien and a right of equitable offset, things are not equal and the offset is given an equitable preference." Salaman v. Bolt, 74 Cal.App.3d 907, 918 (Cal.Ct.App. 1977). It is unclear whether an equitable offset comes before an attorney's lien, but as the $70,000 fund is sufficient to satisfy both Local 569 and Mr. de la Flor's liens, the court declines to state which comes first by law. In the court's discretion, the court treats Local 569's equitable offset as first.

V. Upon consideration of the papers, oral argument thereon and the foregoing discussion, the court hereby disburses the registry funds, in order of priority, as follows:

1. $14,656.99 shall be disbursed to Local 569. The Clerk of the Court is ordered to remit a check in the amount of $14,656.99 to:

International Brotherhood of Electrical
Workers Local 569
Attention: Thomas Pridemore, Business Manager
215 West Washington Street
San Diego, California 92103

Taxpayer ID # 95-0865952

2. Until further order by the court, the Clerk of the Court is ordered to hold $17,500 in the court registry. This amount shall remain in the court registry pending the court's determination of the amount of Mr. de la Flor's fee on January 7, 1994. The court is not reserving an additional amount for interest on Mr. de la Flor's fee because, as his fee is not yet liquidated, the court cannot calculate interest. Should Mr. de la Flor recover $17,500, the Clerk of the Court shall be ordered to release the remainder to Fischbach & Moore, Inc.

3. $955.05 shall be disbursed to L & B Electric, Inc. The Clerk of the Court is ordered to remit a check in the amount of $955.05 to:

L & B Electric, Inc.
8219 Garfield Avenue
Bell Gardens, California 90201

Taxpayer ID #95-2482867

4. The remainder of the fund (the fund's total balance as of the date of disbursement minus $33,112.04) shall be disbursed to Fischbach & Moore, Inc. The clerk of the Court is ordered to remit a check in this amount to:

The Fischbach Companies
7 Hanover Square
New York, New York 10004

Taxpayer ID #13-0710600

W. The Clerk of the Court shall remit said checks on January 19, 1994, or as soon as possible thereafter. This 35 day window shall provide the parties time to receive this order and to file an appeal, if any, to the Ninth Circuit before any funds are released.

II. Objections to the Hearing

Plaintiff has filed an objection to the court's scheduling hearings in Cases No. 85-1719-B(M), 87-0172-B(M) and 91-1543-B(M) at the same time. The court DENIES the objection.

III. Sanctions

The Union and Trusts defendants in Case No. 91-1543-B(M) have requested the court to impose sanctions against plaintiff for filing numerous frivolous pleadings. The court DENIES this request.

IV. Motion to Intervene

Fischbach & Moore, Inc., has filed a motion to intervene in this case for the sole purpose of obtaining a writ of attachment. This motion is DENIED as moot.

V. Motion to Stay Release of Funds

Fischbach & Moore, Inc., has filed a motion to stay the court's order releasing the registry funds. This motion is DENIED.

VI. Writ of Mandamus

Fischbach & Moore, Inc., has notified the court that it believes this court was divested of jurisdiction to disburse the registry funds when plaintiff filed his petition for a writ of mandamus with the Ninth Circuit, seeking to compel this court to disburse the registry funds. The court is not aware of any authority for this proposition, nor has Fischbach cited any to the court. This motion, to the extent it is a motion, is DENIED.

IT IS SO ORDERED.

Filed: DEC 15 1993

RUDI M. BREWSTER
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B(M)

ORDER FILING PLAINTIFF'S MOTION FOR AN ORDER RELEASING BOND NUNC PRO TUNC TO

SEPTEMBER 27, 1993

The court has reviewed plaintiff's request for correction of the docket in this case. The court received plaintiff's Ex Parte Notice of Motion and Motion for an Order Releasing Bond on September 13, 1993. The motion was rejected for filing because the court had not yet spread the Ninth Circuit's mandate affirming the district court's judgement and restoring this court's jurisdiction to release the appeal bond. As the court spread the mandate on September 27, 1993, the court hereby orders plaintiff's motion filed nunc pro tunc to September 27, 1993.

IT IS SO ORDERED.

FILED: JAN 7 1994

RUDI M. BREWSTER
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B(M)

ORDER DISBURSING REGISTRY FUNDS TO GEORGE DE LA FLOR AND THE FISCHBACH COMPANIES

In its disbursement order of December 15, 1993, the court ordered the Clerk of the Court to hold $17,500 pending the court's determination of the amount of George de la Flor's attorney's lien. The order stated that should the court determine that Mr. de la Flor is entitled to less than $17,500, the remainder would be disbursed to Fischbach & Moore, Inc. On January 12, 1994, a hearing on Mr. de la Flor's attorney's lien was heard before the Honorable Rudi M. Brewster. Lawrence Moore appeared in pro per; George de la Flor, Esq., appeared for himself.

A. Legal Standards

In California, an attorney does not have a lien on his or her client's judgement by equitable right. Wagner v. Sariotti, 56 Cal.App.2d 693, 697 (Cal.Ct.App. 1943). Under California law, "A lien in favor of an attorney upon the proceeds of a prospective judgement in favor of his client for legal services rendered...may be created either by express contract...or it may be implied if the retainer agreement between the lawyer and client indicates that the former is to look to the judgement for payment of his fee." Cetenko v. United California Bank, 30 Cal. 3d 528, 531 (Cal. 1982) (citations omitted). In most jurisdictions, attorneys are allowed "specific charging liens, " or, equitable rights to satisfy his or her expenses and fees out of the judgment. Witkin Cal. Proc. 3d & 143. However, in California, courts have not yet approved of such liens. Id., see also Isrin v. Superior Court, 63 Cal.2d 153,157 (Cal. 1965). A contractual attorney's lien survives a discharge or voluntary withdrawal of the attorney from representation. Pearlmutter v. Alexander, 97 Cal.App.3d Supp. 16, 20 (Cal.Ct.App. 1979).

B. Discussion

Upon review of the papers. the court finds that there is no dispute that Mr. de la Flor represented Mr. Moore for two separate periods of time. The first representation period appears to have commenced some time before this case was filed and ceased in 1987. The parties do not agree, however, on whether they signed a written fee agreement for the first representation period. Mr. de la Flor claims that such an agreement existed, but that he no longer has a copy of it. Neither R. de la Flor nor Mr. Moore has submitted a copy of such an agreement to the court.

The second representation period appears to have commenced on October 29, 1988, when Mr. de la Flor and Mr. Moore entered into a written fee agreement. Mr. de la Flor has submitted a copy of this agreement to the court. The agreement provides, "Attorney shall have a lien on any settlement, award, verdict or judgment obtained in this matter." The court finds that this contract establishes a valid attorney's lien in favor of Mr. de la Flor for fees earned during the second representation period.

Mr. de la Flor has submitted moving papers seeking disbursement of $17,500 in attorneys fees. Of that amount, $12,537.50 reflects fees he claims he earned during the first representation period, and $4,962.50 reflects fees he claims he earned during the second representation period. The court has reviewed billing statements submitted by Mr. de la Flor. Based on these billing statements, the court finds that $4,962.50 represents 66.15 hours at $150 per hour, divided by de la Flor to reflect the amount of time he believes he spent assisting Mr. Moore as opposed to co-plaintiff Walter Whelan.

Under California law, without evidence of an agreement between Mr. de la Flor and Mr. Moore, the court has no authority to disburse funds for attorney's fees Mr. de la Flor claims he earned during the first representation period. Therefore, the court can award only $4,962.50, plus interest, to Mr. de la Flor. Calculating interest at 6% per annum, beginning on the last billing date, April 11, 1989, and continuing to January 12, 1994, the court awards Mr. de la Flor daily interest of $.83 ($4,962.50 times .06 divided by 360 days per year), or a total interest payment of $1,441.71.

C. Disbursement Schedule

Therefore, upon consideration of the law, the moving papers, and oral argument thereon, the court orders the Clerk of the Court to remit a check in the amount of $6,404.21 to:

George de la Flor, Esq.
835 Fifth Avenue, Suite 309
San Diego, California 92101

Taxpayer Identification No. 567-33-1846

After remitting said check, the Clerk of the Court is ordered to remit a check for all the retained registry funds remaining for case no. 85-1719-B (AJB) to:

The Fischbach Companies
7 Hanover Square
New York, New York 10004

Taxpayer Identification No. 13-0710600

The Clerk of the Court shall remit said checks on February 17, 1994, or as soon as possible thereafter. This thirty five day window shall provide all parties time to receive this order and to file an appeal before these funds are released.

This order shall have no other effect on the court's December 15, 1993, disbursement order.

IT IS SO ORDERED.

Filed: JAN 13 1994

RUDI M. BREWSTER
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B (AJB)

ORDER DENYING PLAINTIFF'S REQUEST FOR FINDINGS OF FACT

The court has received plaintiff's "Request for Findings of Fact on the Court's Awards of Transcript Costs to Defendant Local 569 and of Attorney Fees on an (Ostensible) Lien by George de la Flor." The court declines to issue findings of fact. Plaintiff's request is DENIED.

IT IS SO ORDERED.

Filed: MAR 28 1994

RUDI M. BREWSTER
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 85-1719-B (AJB)

ORDER ESTABLISHING PROCEDURES FOR FILING MOTIONS

The court has received a letter from plaintiff, dated April 13, 1994, a copy of which is attached, seeking a hearing date for motions for reconsideration of several orders of the court. Due to the volume of paperwork this case has generated, and the number of motions that have been filed and likely will be filed, the court hereby establishes a new procedure for filing motions in this case, effective April 14, 1994.

Any party who wishes to have a motion heard shall not request a hearing date from chambers, but shall file the motion with the Clerk's Office. The Receiving Clerk is ordered to file-stamp such motions without a hearing date designated. Upon receiving a copy of said motion, the court will review it and decide whether it will entertain the motion. The court will issue its decision in a written order, which will be mailed to the parties. The court's order will; (1) state that the court declines to entertain the motion; or (2) state that the court will entertain the motion on the papers and set a briefing schedule; or (3) state that the court will entertain the motion at a hearing, set a hearing date and set a briefing schedule.

As for plaintiff's present request, he may file his motions with the Clerk's Office, and the court will respond according to the procedures outlined in this order.

IT IS SO ORDERED.

Filed: APR 18 1994

RUDI M. BREWSTER
U.S. District Judge

Kissane & Cook
12865 Caminito Pointe Del Mar, Suite 150
Del Mar, CA 92014
January 16, 1996

VIA MESSENGER
Clerk of the Court
United States District Court,
Southern District of California

Re: Lawrence Moore v. IBEW Local 569, et al.;
Case Nos. 87-0172-B and 91-1543-B

Dear Sir:

Enclosed please find a Stipulation which has been entered into by and between our clients, the San Diego Electrical Pension Trust, the San Diego Electrical Health & Welfare Trust and the San Diego Electrical Training Trust, on the one hand, and Fischbach & Moore, on the other hand. Pursuant to the terms of the Stipulation, as approved by judge Brewster, our clients are entitled to receive from the registry funds on deposit in Case No. 87-0172-B, the principle sum of $46,429.75, plus interest through January 16, 1996, in the amount of $5,800.50, which represents interest at the rate of ten percent per annum from the date of the trusts' judgment, October 17, 1994. Interest shall continue to accrue at the rate of $12.72 per day until the Trusts' judgment is disbursed under this Stipulation. Please disburse this amount to our law firm at the above address forthwith to be held in our client trust account pursuant to the terms of the Stipulation.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to give me a call.

Very Truly Yours,
Melissa W. Cook
Kissane & Cook

cc: Steven Sayler; Lewis Levy; Jennifer Messersmith; Lawrence Moore, w/enclosures

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CASE NO. 87-0172-B
CASE NO. 91-1543-B
STIPULATION RE DISBURSEMENT OF FUNDS
AND ORDER THEREON

Defendants Fischbach & Moore (hereafter "FISCHBACH") and the SAN DIEGO ELECTRICAL PENSION TRUST, SAN DIEGO ELECTRICAL HEALTH & WELFARE TRUST and SAN DIEGO ELECTRICAL TRAINING TRUST (hereinafter collectively referred to as "TRUST DEFENDANTS"), by and through their attorneys, stipulate as follows and ask that the court enter an order carrying out the stipulation of the parties.

STIPULATION

1. On March 8, 1995 the Honorable Rudi M. Brewster entered an order in Civil Case Nos. 87-0172-B and 91-1543-B providing for the disbursement of funds previously deposited with the Clerk of the Court by IBEW LOCAL 569 in Case No. 87-0172-B to FISCHBACH. A true and correct copy of those orders are attached hereto as Exhibit "A" and incorporated herein by reference.

2. The above-referenced disbursement order recited that the lien filed by FISCHBACH took priority over the lien filed by the TRUST DEFENDANTS under the terms of California Civil Code § 2897.

3. Plaintiff Lawrence Moore had previously appealed the court's award of a judgment in favor of FISCHBACH, which formed the basis for its lien. On April 5, 1995 the Ninth Circuit Court of Appeals reversed the District Court's judgment awarding attorneys fees to FISCHBACH in Appeal No. 93-56717 (D.C. 87-0172-B). Thereafter, FISCHBACH filed a Petition for Writ of Certiorari with the U.S. Supreme Court. That Petition is currently pending.

4. The undersigned agree that in view of the reversal of FISCHBACH's judgment, the TRUST DEFENDANTS' lien shall be given priority to the claim of FISCHBACH and that the proceeds awarded to the TRUST DEFENDANTS in the principal amount of $46,429.75 by order of the Court dated October 17,

1994, plus interest at the rate of 10% per annum of $4,642.98 through October 17, 1995, for a total of $51,072.73 may be immediately disbursed to TRUST DEFENDANTS to be held in a segregated interest bearing client trust account, established by TRUST DEFENDANTS' attorneys.

5. The sum so deposited will not be disbursed by TRUST DEFENDANTS' attorneys until an order denying FISCHBACH's Petition for Writ of Certiorari is rendered or in the event that the Petition for Writ of Certiorari is granted, until further court order directing disbursement of said funds.

6. Should FISCHBACH's Petition for a Writ of Certiorari be denied, the attorneys for TRUST DEFENDANTS may disburse said funds to the TRUST DEFENDANTS.

7. Should FISCHBACH's Petition for Writ of Certiorari be granted, resulting in a reversal of the ruling of the U.S. Court of Appeals as more fully set forth in Paragraph 3, above, all monies disbursed to TRUST DEFENDANTS plus interest shall be returned to FISCHBACH.

Filed: NOV 14 1995 KISSANE & COOK
By: Matthew Kissane
Date: 10/30/95 Attorney for Trust Defendants

HILLYER & IRWIN
By: Steven Sayler
Attorney for Fischbach & Moore

ORDER

IT IS SO ORDERED that the disbursement of the principal amount of $46,429.75 plus interest in the amount of $4,642.98 through October 17, 1995, which sum is the amount of attorneys fees awarded to TRUST DEFENDANTS in Case No. 91-1543-B, be disbursed by the Court forthwith to the Kissane & Cook client trust account to be held in accordance with the provisions of the stipulation of the parties as set forth.

Date: 11/11/95 Gordon Thompson, Jr.
District Court Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil Nos. 87-0172-B
85-1719-B
91-1543-B

ORDER DISBURSING FUNDS

On April 29, 1996 the parties in the above-captioned case appeared before the Court regarding an Order to Show Cause ("OSC") hearing ordered by the Court as to why funds currently on deposit with the Court Clerk should not be distributed to plaintiff Lawrence Moore. No appearance was entered on behalf of plaintiff Lawrence Moore. Steven Sayler appeared on behalf of defendant Fischbach & Moore ("F&M"). Melissa Cook appeared on behalf of San Diego Electrical Pension Trust, San Diego Electrical Health & Welfare Trust and the San Diego Electrical Training Trust (the "Trust Defendants"). Jennifer Messersmith appeared on behalf of defendant International Brotherhood of Electrical Workers ("IBEW"). Abe F. Levy appeared on behalf of defendant IBEW Local 569 ("Local 569"). George de la Flor appeared on behalf of himself. After consideration of the papers submitted and the oral arguments made, the Court orders as follows:

A. Immediate distribution of $5,801.27 plus interest at 6% per annum accruing from April 15, 1992 to defendant Local 569;

B. F&M immediately remit to the Clerk of Court $57,644.34 plus interest at 6% per annum accruing from May 19, 1994;

C. The following sums be distributed thirty days from entry of this order:
   (1) $10,840 plus 6% per annum to George de la Flor, Esq. from April 15, 1992; and
   (2) $51,072.73 to the Trust Defendants currently held in the client trust account of Kissane & Cook;

D. The Clerk of the Court withhold from the Clerk's account $11,590.00 pending the outcome of the Trusts

Defendants' application to the Ninth Circuit for attorney's fees in Civil Case No. 91-1543; upon the Ninth circuit's decision, the Clerk of the Court shall disburse immediately to the Trust Defendants any amount of awarded attorney's fees, and may disburse to plaintiff Lawrence Moore any of the $11,590.00 which is not awarded to the Trust Defendants;

E. The Clerk of the Court withhold the distribution of $60,000, to remain on deposit with the Court, for thirty days from the date of entry of this order pending a request by defendants to the Ninth Circuit for a further stay of distribution;

F. The balance of the funds now on deposit with the Clerk of the Court are ordered immediately distributed to plaintiff Lawrence Moore.

II. BACKGROUND

At issue in this case are the distribution of funds currently on deposit with the Clerk of the Court which have been awarded to plaintiff as the result of jury verdicts and attorneys' fees awards in two cases tried in the district court, Civil Case No. 85-1719 and Civil Case No. 87-0172. Also at issue are funds on deposit in Civil Case No. 91-1543 which represents an appeals bond posted by plaintiff Moore. The funds are on deposit with the Court pursuant to the posting of supersedeas bonds by defendant Local 569 to stay execution of judgment pending appeal to the Ninth Circuit. Those awards have now been affirmed and the funds are ready for distribution. The Court ordered this OSC hearing to adjudicate the claims of the various defendants and plaintiff's counsel who have levied the funds to satisfy claims they have against plaintiff.

III. DISCUSSION

A. Claim by Attorney George de la Flor

George de la Flor is seeking attorneys fees he is owed by plaintiff for his representation of plaintiff in civil Case No. 87-0172 for the period of October 1988 to April 1989. De la Flor filed his notice of lien on February 17, 1994. By previous order of this Court, dated January 13, 1994 de la Flor, over the

objections of plaintiff, was awarded attorneys fees for the same period of time for his representation of plaintiff in Civil Case No. 85-1719. This award was affirmed by the Ninth Circuit in a memorandum order dated may 8, 1995.

Attorney's liens like the one filed here are recognized in federal actions, although the validity of them is analyzed under state law. Venegas v. Skaggs, 867 F.2d 527, 531 (9th Cir. 1989), aff'd sub nom Venegas v. Mitchell, 495 U.S. 82 (1990). De la Flor has a valid contractual attorney's fee claim that survived his withdrawal. Pearlmutter v. Alexander, 97 Cal.App. 2d Supp. 16, 20 (Cal.App. 1979); Fracasse v. Brent, 6 Cal.3d 784, 791 (1972). Under California law, this claim is only valid for the period of contractual representation, Cetenko v. United California Bank, 30 Cal.3d 528, 531 (Cal. 1982), which in this case is from October 29, 1988 to April 11, 1989.[1]
De la Flor's lien takes precedence over the disbursements to the other claimants in the instant action. Spielvogel v. Harkins & Maeger, 639 F.Supp. 1397, 1399 (S.D.N.Y. 1986); Irsin v. Superior Court, 63 Cal.2d 153, 158-59 (1965).

The court finds that plaintiff has not raised any viable objection to de la Flor's apparently legitimate claim for attorneys fees.[2] The billing records submitted by de la Flor for the period

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[1] Plaintiffs Moore and Whelen and attorney de la Flor signed an agreement for representation on October 29, 1988. This agreement was in effect until the termination of de la Flor's representation, following his withdrawal, on April 11, 1989.

[2] Moore has raised essentially the same objections to de la Flor's request that he raised upon de la Flor's application in Case No. 85-1719. he argues that de la Flor is not entitled to fees because: (1) de la Flor lied to the Court by submitting doctored and "concocted" billing statements; (2) de la Flor withdrew from the cases unconditionally and thus his claim did not survive the withdrawal; (3) that de la Flor breached the contract by failing to provide monthly billing statements; (4) that de la Flor is estopped from re-litigating his request for attorneys fees which were already determined and awarded in the earlier order; and (5) that de la Floor's withdrawal was unethical and therefore precludes him from seeking fees. This Court finds that Moore has presented no evidence regarding any payments he made

from October 29, 1988 to April 11, 1989 indicate a total of 176.75 hours spent on both cases. In accordance with the understanding of the earlier order awarding de la flor attorney's fees for his representation in Civil Case No. 85-1719, 85.6 hours are attributable to Civil Case No. 87-0172. De la Flor indicates that all of this time has spent working on behalf of Moore and none is separately chargeable to Moore's co-plaintiff Whelen. (De la Flor Decl. at 5.) Plaintiff has presented no evidence to the contrary. At $150 per hour this results in fees of $12,840.00. De la Flor has given Moore a $2,000 credit for amounts paid. Thus de la Flor is entitled to $10,840.00 in attorney's fees plus interest calculated at 6% per annum beginning on the date the bond was posted, April 15, 1992, and continuing to the date of this Order. This results in a daily interest award of $1.81 per day ($10,840.00 X 0.06/360) and a total award of $13,471.74.

B. Distribution to Fischbach & Moore

F&M is requesting a distribution of funds representing awards for attorneys fees and costs totaling $2,845.50 which they were previously awarded in Civil Cases No. 87-0172 and 91-1543. F&M was awarded $512.50 in Case No. 87-0172 by order dated March 21, 1996. They were awarded $2,201 in Case No. 91-1543 by order dated December 15, 1993. Finally, the Ninth Circuit awarded them $132.00 in costs by order dated August 4, 1994.

Judgment liens must be filed pursuant to California Code of Civil Procedure § 708.410 which requires the claimant to file

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beyond the $2,000 credit he concedes, and finds no evidence of unethical behavior surrounding withdrawal. Moreover, the Court finds no evidence that de la Flor tampered with the billing record, withdrew unconditionally, or breached the contract. This Court also finds that its earlier order awarding de la Flor attorney's fees in Civil Case No. 85-1719 does not bar his claim here; that order clearly covered work done solely in conjunction with that case and the billing records were specifically divided to exclude any award for attorneys fees in Civil Case No. 87-0172. It is appropriate for de la Flor to proceed with his additional and separate claim for attorney's fees in this case now.

a notice of lien and an abstract or certified copy of the judgment creditor's money judgment. It appears from the record that F&M has valid liens which arise from actions that are no linger pending before this Court.[3] Thus, the court concludes that these funds should be immediately distributed to F&M.

F&M is currently holding funds which it must return to the Court; F&M was distributed $60,489.84 from Civil Case No. 85-1719 pursuant to its attorney's fee award which was subsequently vacated by the Ninth circuit. F&M is no longer entitled to this money and thus must immediately remit it to the Court.

The Court thus orders that F&M return the $60,489.84 to the Clerk of the Court, less the amount which F&M is currently owed by plaintiff, $2,845.50. The total amount of the remission will thus be $57,644.34 plus interest calculated at 6% per annum from the date of the disbursement to F&M, May 19, 1994, to the date of this Order. This results in an interest payment of $9.61 per day for a total interest payment of $6,717.39. Thus, F&M's total payment to the Clerk of the Court will be $64,361.73, to be placed on deposit in Civil Case No. 85-1719.

C. Distribution to Local 569

Local 569 is requesting distribution of $5,801.27 in surplus funds it deposited with the Court, plus accrued interest. By order dated March 9, 1995 this Court determined Local 569's entitlement to these funds. As this amount is not the subject of any current appeal the Court orders that $5,801.27 plus interest calculated at 6% per annum from the date of deposit of the bond, April 15, 1992, to the date of this Order be distributed immediately to Local 569. This would result in an interest payment of $0.97 per day ($5,801 X 0.06/360) and a total disbursement of $7,211.65.

D. Trust Defendants

On October 30, 1995 the Trust Defendants and F&M entered

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[3] Plaintiff Moore filed a Notice of Appeal of the award of $512.50 in fees in Case No. 87-0172. However, as Moore has not filed a stay of execution of this award, the Court finds it appropriate to order distribution of these funds at this time.

into a stipulation whereby they agreed that the Trust Defendants' lien would take priority over any remaining lien F&M might have.[4] This stipulation, approved by the court, provided that $51,072.73 would be placed in Kissane & Cook's client trust account for the benefit of the Trust Defendants[5] and would be distributed to the Trust Defendants if the Supreme Court denied F&M's petition for certiorari. The Supreme Court recently denied the petition and thus the Trust defendants are entitled to a distribution of these funds. This distribution will take place thirty days from the date of entry of this order.

The Trust Defendants also request that the Court withhold distribution of an amount equivalent to their currently pending application to the Ninth Circuit for attorney's fees. The trust Defendants have requested $11,590.00 in attorneys' fees which they incurred in defending the appeal of their original attorneys fees award in Civil Case No. 91-1543. The Ninth Circuit has not yet ruled on this application. Thus, the Court finds that it is appropriate to withhold $11,590.00 for this purpose at this time. This money will remain on deposit with the Clerk of the Court. The Court also orders that any amount of attorneys fees which the Ninth Circuit awards to the Trust defendants will be immediately distributed to the Trust Defendants upon the Trust Defendants filing with the Court Clerk a certified copy of the Ninth Circuit opinion granting those fees. Any surplus between the $11,590.00 remaining on deposit with the Clerk of the Court and the amount of attorneys fees awarded to the Trust Defendants will, after a ruling by the Ninth Circuit, be distributed to plaintiff.

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[4] The March 9, 1995 order of this Court determined that both the Trust Defendants and F&M had valid liens on the funds. F&M's lien was subsequently invalidated by the Ninth Circuit's opinion in Moore v. Local 560 of the IBEW, 53 F.3d 1054 (1995) which vacated F&M's attorneys fees award which was the basis of the lien.

[5] The Trust Defendants were awarded $46,429.75 in attorneys fees in Civil Case No. 91-1543. The $51,072.73 represents the attorneys fees plus interest at 10% per annum through October 17, 1994.

E. Other Withholdings

The Court also finds it appropriate at this time to withhold another $60,000.00 of the funds on deposit to cover any costs and attorneys fees which might be awarded defendants pursuant to their defense of plaintiff's appeals in Civil Case Nos. 93-1857 and 94-02-K, both of which are still pending. These funds will remain on deposit with the Clerk of the Court for thirty days from the date of this Order. If defendants have failed to obtain a further stay of distribution from the Ninth Circuit within that thirty days, these funds will be immediately distributed to plaintiff after the thirty day period has passed.

F. Distribution to Moore

Any funds remaining in the Clerk of Court's accounts for Civil Case Nos. 85-1719, 87-0172 and 91-1543 which have not been distributed or withheld pursuant to this order shall be immediately distributed to plaintiff Moore.

IV. CONCLUSION

As outlined above the Court orders that out of combined deposits in Civil Case Nos. 85-1719, 87-0172 and 91-1543 (including a total of $64,361.73 to be remitted to the Clerk of the Court by F&M), a total of $7,211.65 be distributed thirty days from the date of entry of this Order, and a total of $71,590.00 be withheld from distribution for no more than thirty days to be either awarded to the Trust Defendants, ordered to remain on deposit with the Clerk of the Court, or be distributed to plaintiff contingent upon rulings from the Ninth Circuit Court of Appeals. It is further ordered that $51,072.73 currently on deposit in the client trust account of Kissane & Cook (not on deposit with the Clerk of the Court) be released to the Trust Defendants thirty days from the date of entry of this Order.

IT IS SO ORDERED.

Filed: APR 29, 1995 RUDI M. BREWSTER
U.S. District Judge

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Appeal No. 96-55971/96-55980
D.C. Nos. 85-1719-B/87-0172

MEMORANDUM*
Appeal from the United States District Court
for the Southern District of California
Rudi M. Brewster, District Judge, Presiding
Filed February 13, 1998**

Before: PREGERSON, CANBY, and LEAVY, Circuit Judges.

Lawrence Moore appeals pro se a district court order disbursing funds on deposit with the clerk of district court consisting of jury verdicts judgments, attorney fee awards and bonds. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Moore contends that the district judge erred by failing to recuse himself pursuant to 28 U.S.C. § 455. We disagree. A denial of a motion for recusal is reviewed for an abuse of discretion. See Mayes v. Leipziger, 729 F.2d 605, 607 (9th Cir. 1984). Our review of the record reveals no basis for questioning the district judge's impartiality. See Liteky v. United States, 510 U.S. 540, 555 (1994).

Moore contends the district court erred by making disbursements from the registry funds posted in CV-85-1719 because no liens had been filed against those funds while that action was pending. See Cal.Civ.Proc.Code § 708.410(d).

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*This disposition if not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir.R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a); 9th Cir.R. 34-4. Accordingly, appellant's request for oral argument is denied.

This contention fails because, in its April 29, 1996 order, the district court did not make any disbursements from the registry funds posted in CV-85-1719. Rather, the district court simply required Fischbach & Moore to remit the $60,489.84 that Fischbach & Moore had erroneously received from the registry funds in CV-85-1719 pursuant to the district court's December 15, 1993 order.[1/] Although Moore refers to a $2,845.50 disbursal to Fischbach & Moore, this disbursal was pursuant to valid liens filed in CV-87-0172 and CV-91-1543.

Moore contends that the district court lacked jurisdiction to disburse the registry funds in CV-87-0172 to the defendants after this court had issued the mandate in Appeal Nos. 92-55515, 92-55517 and 93-55381 on August 2, 1994. This contention lacks merit. A district court retains jurisdiction over matters necessary to satisfy a judgment. See Blackburn Truck Lines, Inc. v. Francis, 723 F.2d 730, 732 (9th Cir. 1994).[2/]

Moore contends that the district court erred by concluding that his attorney had a valid lien against the registry funds. We rejected these same arguments in Moore v. Local 569 of the Int'l Bhd. of Elec. Workers, No. 94-55120, 1995 WL 268650, at *1-2 (9th Cir. May 8, 1995). To the extent that Moore contends that his attorney's withdrawal was unjustified, this contention lacks merit. We reject Moore's remaining contentions.

AFFIRMED.

[1/] We reject Moore's contention that the district court erred by ordering Fischbach & Moore to repay the $60,489.84 with 6% interest, as opposed to 10% interest.

[2/] Moore also contends that the district court lacked jurisdiction to disburse the registry funds on December 15, 1993 in CV-85-1719 to the defendants after this court had issued the mandate in appeal nos. 90-55557, 90-55558, 90-55559 and 91-55411 on September 16, 1993. This contention was disposed of in Moore v. Local 569 of the Int'l Bhd. of Elec. Workers, No. 94-55120, 1995 WL 268650, at *1 (9th Cir. May 8, 1995).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case No. 93-1857-K

San Diego, California
Monday, May 9, 1994

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE JUDITH N. KEEP
UNITED STATES DISTRICT JUDGE

(Call to order of the Court.)

MR. SAYLER: Steve Sayler on behalf of Defendant Fischbach & Moore.

MR. MOORE: Lawrence Moore appearing on behalf of himself, your Honor.

MS. MESSERSMITH: Jennifer Messersmith appearing on behalf of the IBEW. I'm local counsel. And the IBEW is also represented by Terry Yellig from Washington, D.C.

MR. KISSANE: Matthew Kissane appearing on behalf of Defendants Pridemore, Aylsworth, San Diego National Electrical Contractors Association, Ron Cooper, Dave Raspolich, James Fuller.

. . .

THE COURT: All right. I've read and considered the papers that have been submitted. Mr. Moore, is there anything that you would like to add on this matter?

MR. MOORE: Just briefly one thing, your Honor ... the motion to dismiss on the basis of res judicata in the moving papers was relatively vague, and they seemed to have honed their argument in the reply papers, but they have not presented a copy of the original motion by me in another court that they are saying is res judicata. And I'd like to offer a copy of that in evidence so that the court can see that neither the facts nor the parties nor the cause of action are the same.

THE COURT: They concede that there are differences. But the issue is whether those matters could have been brought up in the prior litigation because there basically is a policy that

one cannot split one's causes of actions....

Now, as I understand their papers, they are saying there is nothing that you are alleging here that could not and would properly have been brought up in the prior suit.

Mr. MOORE: Well the fact is, your Honor, that the cause of action I'm suing for now did not exist at the time that I made the original motion to amend. There was no hearing. There was no collusion between the parties at those so-called grievance hearings to award the attorney's fees. That was a year or two later.

The original cause of action was because they had inserted the provision into the collective bargaining agreement, and that particular provision has a long history in the Ninth Circuit. The International Union has attempted to insert that provision into the International Union's constitution previously, and into the local union by-laws. And in cases I cited, Ross v. IBEW in Phoenix, for instance, the Ninth Circuit on appeal ruled that the provision clearly violates the right to sue articulated in the LMRDA.

So when they originally brought their motion for attorney's fees against me and I realized it was in the agreement, I made a motion to amend to add a cause of action for putting that in the inside agreement. And the negotiating parties are the parties to that suit. But the court denied leave to amend [and] denial of leave to amend doesn't constitute res judicata....

But the set of facts that we have now are completely different. These people went ahead and colluded, and awarded $224,000 against me and I was the prevailing plaintiff in the case before the jury. And, coincidentally, it happens to be an award of the same amount of money that they have on deposit in the Court Clerk's office for the jury verdicts that I won before the jury. So its clearly an extortion attempt to try to get me to settle.

So these causes of action have nothing to do with each other. They're not the same parties. They're not the same causes of action. And they're not the same set of facts. And the cause of action I'm suing for now, the award of attorney's fees, happened a year or two years after the original motion to amend. If you'd like to see the original motion to amend so that you can see neither the parties nor the facts nor the cause of action is the same I'd be happy to show it to you.

THE COURT: Sure. Go ahead and hand it to the clerk, showing it to counsel first.

. . .

THE COURT: Okay. All Right. Before me are five motions which -- each of which will be discussed in turn.

. . .

Plaintiff brings three claims. Plaintiff alleges the Defendants colluded to have a judgment for attorney's fees entered against him in 87-0172, and this collusion affected his right to sue under the federal labor laws.

In addition, Plaintiff alleges the Defendants colluded to have language added to the collective bargaining agreement that permitted the awarding of attorney's fees and thus breached the requirement to act in good faith.

Finally, Plaintiff alleges the Defendants conspired to perform these acts, that the acts were performed fraudulently, and that by their actions they intentionally inflicted emotional distress.

Given the distinct nature of the motions, I will examine them each in turn. The first, of course, is recusal.

The present complaint was originally assigned to Judge Rhoades on March 2nd pursuant to Local Rule 40.1(e), which I incorporate by reference. The case was transferred to Judge Brewster.

On March 3, 1994 however, Judge Brewster recused himself because he's now a defendant in a case brought by Mr. Moore. Upon the recusal, the matter was reassigned to the draw and it was randomly assigned to me.

Plaintiff has brought a motion seeking my recusal from this matter and requesting that the case be reassigned to Judge Rhoades.

. . .

I deny the motion.

. . .

Defendants next bring a motion to dismiss the complaint under 12(b)(6), which I incorporate by reference, contending Plaintiff could have brought this claim in the prior lawsuit. It is therefore barred by res judicata. They cite Federated Department Stores v. Moitie, 452 U.S. 394.

The basis for Defendants' motion is the proceedings that took

place in 87-0172.

. . .

In the legal proceedings the court granted summary judgment in favor of Fischbach & Moore as to Moore's claims against it. Following the ruling Fischbach & Moore filed a motion to recover its attorney's fees incurred in defending the action pursuant to 106 of the inside agreement.

. . .

On June 11, 1993, in document 949-1 of case 87-0172, Judge Brewster affirmed that award.

. . .

Finally, on November 11, 1993, in document 994-1, Judge Brewster denied Plaintiff's motion for relief.

In affirming the award, Judge Brewster specifically rejected attacks by Plaintiff on the legality of 1.06 of the inside agreement. He made the following rulings:

> "Two, the Court has previously ruled that Section 1.06 of the inside agreement is valid and applicable to Mr. Moore and has ordered the parties to comply with it. Accordingly, the arbitration committee had jurisdiction.
>
> Three, the attorney fees award does not violate public policy or the American rule against attorney's fees since attorney's fees are provided for by the inside agreement."

When Mr. Moore brought his motion to amend or alter Judge Brewster's ruling, he specifically raised an attack against 1.06 and its chilling effect on his right to sue. He stated:

> "The Labor-Management Reporting and Disclosure Act was intended to protect union members from the type of collusion (and I stress that word, collusion) between the IBEW, Fischbach, and NECA, which this Court has witnessed since 1985. The addition of 1.06 to the CBA was not done by the labor organizations, employers, labor relations consultants, and their officers and representatives to protect the employees' rights."

In a subsequent case brought by Mr. Moore he again attacked

the validity of 1.06. In 91-1543 Judge Brewster ruled:

> "Plaintiff would also like to attack the validity of 1.06 of the inside agreement. If the claim was or should have been adjudicated in a prior lawsuit, the claim is res judicata in this suit. Federated Department Stores v. Moitie, 452 U.S. 394."

. . .

I've reviewed Plaintiff's opposition. I do not find his argument is persuasive. He states,

> "arguments against Fischbach's motion [for attorney fees] are neither claims nor theories in support of claims, and have no res judicata effect on Plaintiff's causes of action. Defendants' invalid appeal to a 'general principle of law,' and other case law authorities are equally frivolous."

It's unclear to me what argument of semantics the Plaintiff is making. Nonetheless, I hold the present claim brought by the Plaintiff is a theory for res judicata purposes that would invalidate the enforcement by Judge Brewster of the arbitrator's award of attorney's fees.

The claim that somehow emotional distress is later because it only came about because the attorney's fees was argued - were imposed is sophistry. If the attorney's fees should not have been imposed, then all proper challenges should have been drawn to Judge Brewster's attention so that they would not - that award that was given by the arbitrator was not applied by Judge Brewster. It was - he did consider the challenges that were brought. He made the award.

And I, therefore, hold that Defendants' motion to dismiss the present claim in its entirety must be granted. The dismissal is with prejudice because its barred by res judicata.

. . .

However, at this particular point, I think that the doctrine of res judicata has been discussed by Judge Brewster and now discussed by me and I do not find -- I feel, therefore, that the -- this issue has been exhaustedly handled by more than one judge.

I also want to stress on the record that, based upon a review of this case, the papers that were filed before me, and the files that I was asked to take judicial notice of or had to take judicial

notice of in order to rely on -- to rule on this particular motion, it is clear that Mr. Moore's conduct is really nearing the egregious level whereby bonds and Rule 11 sanctions have to be imposed.

I make these statements on the record because I want to inform Mr. Moore on the record that his conduct is approaching a sanctionable level so that there is no question in the future.

First of all, its very costly to keep litigating and relitigating issues.

Secondly, I do find that just the oral record that Mr. Moore made at this hearing today is relevant on the issue of sanctions and bonds. Mr. Moore is not the typical pro se. He's very articulate, very literate. He can comprehend sophisticated legal concepts such as res judicata. He is also capable to make fine distinctions as not only his pleadings but indeed his oral statements here indicate. I'm noting this because, Mr. Moore, although I am not imposing these sanctions today, it is my opinion as a judge from the materials that have been submitted, and that I was asked to review before this hearing, that such is rapidly becoming necessary should these lawsuits against one or more of the [Defendants] herein for these causes of action or those related that could have been brought not stop.

And I want to make very clear that you understand that I see that as something that is very likely to occur only because i want it to be very clear that you've been warned...the issues that have been involved in this lawsuit have been ruled upon by the arbitrator, ruled upon by Judge Brewster on more than one occasion - on several - and now ruled upon by me.

So I want to make very clear that you understand you must be cautious and certainly review Rule 11 and the cases pertaining thereto, as well as doctrines of collateral estoppel and res judicata should you believe that any further lawsuits pertaining to this matter must be filed.

I will - which counsel wants to draft the brief, bottom-line order denying the recusal, granting the motions to dismiss, with prejudice, both the lawsuits as against Mr. J.J. Barry personally for lack of jurisdiction, and the motion to dismiss the entire claims for failure to state a claim due to the doctrine of res judicata.

MR. KISSANE: Your Honor, it would be my pleasure -- Matthew Kissane. I'll prepare that order. Thank you for a fine record.

. . .

MR. MOORE: Would the Court please give the copy of the ex parte motion to amend in Case No. 87-0172 an exhibit number on the record, please?

THE COURT: Yes, I believe it could be Plaintiff's Exhibit 1.

(Proceedings recessed.)

I certify, under penalty of perjury, that the foregoing is a verbatim transcription prepared from the electronic sound recording of the proceedings provided to me, and that said transcription is a true and accurate transcript to the best of my ability and belief.

Peggy Schuerger — May 10, 1994
Transcriber — Date

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

Decision by Court.

IT IS ORDERED AND ADJUDGED

Plaintiff's motion to recuse the Honorable Judith N. Keep is denied. Defendants' motion to dismiss J.J. Barry as an individual defendant is granted. Defendants' motion for a dismissal of all causes of action plead in the Complaint under Federal Rule of Civil Procedure 12(b)(6) is granted and the complaint is dismissed with prejudice. Defendants' motion for a stay of further proceedings and imposition of a bond is denied. Defendants' motion for imposition of sanctions under Rule 11 is denied.

Filed: May 18, 1994 M. Stottlemeyer
Deputy Clerk

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Appeal No. 94-55876
D.C. NO. CV-93-1857

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Judith N. Keep, Chief Judge, Presiding

Filed** May 8, 1995
Pasadena, California

Before: McKAY,** REINHARDT, and FERNANDEZ, Circuit Judges

Lawrence Moore appeals the district court's dismissal of his action which alleged that his union, Local 569 of the International Brotherhood of Electrical Workers, and his old employer, Fischbach & Moore, Inc., wrongfully limited his right to sue in violation of the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 411 (a)(4)., had breached their contract in violation of the Labor Management Relations Act, 29 U.S.C. § 185, and were additionally liable for conspiracy, fraud, and intentional infliction of emotional distress. WE affirm in part and reverse in part.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed.R.App.P. 34(a); 9th Cir.R. 34-4.

** Hon. Monroe G. McKay, Senior United States Circuit Judge, United States Court of Appeals for the Tenth Circuit, sitting by designation.

A. The low number transfer of this case

Pursuant to the Southern District of California's Local Rule 40.1(e), this case was low numbered to the judge who presided over a previous action filed by Moore against his union and employer for breach of a collective bargaining agreement and violations of the LMRDA and LMRA. That rule is designed to conserve judicial resources and it was appropriately implemented in the instant case. It foes not confer upon litigants the right to appear before a particular judge, See Guam Sasaki Corp. v. Diana's Inc., 881 F.2d 713, 715 (9th Cir. 1989) (this court accords deference to district courts' local rules and ... district court decisions which are designed to delineate local practice and define the local rules").

B. The motion for recusal

When the judge who was assigned this case through the low-number process recused himself because he had been sued by Moore in a separate action, the case was randomly assigned to Chief Judge Judith N. Keep. Moore contends that Judge Keep erroneously denied his motion for her recusal on the ground that she had entertained a previous case that he had filed against his union. In that case Judge Keep had noted that Moore's lawsuits were becoming a "hassle" and a "pain" to Moore's opponents. She also recognized their frustration.

Judge Keep's observations do not give rise to a valid claim for recusal since they do not reveal a high degree of favoritism or antagonism. See Liteky v. United States, __ U.S. __, 114 S.Ct. 1147, 1157, 127 L.Ed.2d (1994). At most, they are merely expressions of impatience or dissatisfaction. That does not constitute a reason for recusal. Id.

C. J.J. Barry's dismissal

The district court dismissed J.J. Barry for lack of personal jurisdiction. Moore's claim on appeal is that he never intended to sue Barry in his personal capacity, and that the district court's dismissal shows her bias against Moore. The claim is meritless.

Barry submitted a declaration which established the facts necessary to determine that he did not have minimal contacts with California. See Core-Vent Corp. v. Nobel Indus. AB, 11

F.3d 1482, 1484-1490 (9th Cir.1993). Consequently, the district court did not err when it dismissed the case against him for lack of personal jurisdiction. Id. The district court's ruling did not lend itself to a claim of judicial bias. A judicial ruling alone will rarely give rise to a valid claim for recusal. Liteky, _ U.S. _, 114 S.Ct. at 1157. Furthermore, Judge Keep made absolutely no statement in her ruling regarding the dismissal of Barry which showed any form of favoritism of antagonism toward Moore.

D. The dismissal on res judicata grounds

In Southern District of California Court Case No. CV87-0172B the parties had litigated the question of whether Moore was obligated to pay attorney's fees pursuant to a provision in the collective bargaining agreement. In that case the district court determined that Moore was obligated to pay fees under the fee provision. The district court dismissed this action on res judicata grounds because Moore's claim here and the claim in case number 87-0172B centered on the same provision of the collective bargaining agreement.

We need not decide whether the district court properly applied res judicata principles. That is because in Moore v. Local 569, Int'l Bhd. of Elec. Workers, No. 93-56717 (9th Cir. 1995), filed on the same day as this disposition, we have reversed the district court's determination in 87-0172B. Thus, the district court's determination in this case must also fall.

E. Attorney's fees on appeal

Local 569 and NECA request attorney's fees incurred in this appeal. This Court has discretion to award attorney's fees as a sanction for bringing a frivolous appeal. See Glanzman v. Uniroyal, 892 F.2d 58, 61 (9th Cir. 1989). Moore's appeal had merit. Consequently the request for fees is denied.

Therefore we affirm in all respects other than dismissal of Moore's complaint on the ground of res judicata, as to which dismissal we reverse and remand for further proceedings.

AFFIRMED in part; REVERSED in part and REMANDED. The parties shall bear their own costs on appeal.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 93-1857-K

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT AND DENYING DEFENDANTS' MOTION FOR SANCTIONS AND MOTION FOR A PROTECTIVE ORDER

The court dismissed the Complaint in this matter by Order of May 17, 1994 on the ground that the action was barred by the doctrine of res judicata. Plaintiff appealed. In an unpublished Memorandum Opinion filed May 8, 1995 the Ninth Circuit vacated the dismissal. The circuit court did not address the propriety of the application of the res judicata doctrine; rather, because it concurrently reversed the district court's decision on the previous case, the Ninth Circuit held that "the district court's determination in this case must also fall." (Mem. Op. at 4.) Plaintiff filed a First Amended Complaint on August 24, 1995 which Defendants now move to dismiss. Defendants also move for sanctions against Plaintiff, and for a protective order against future filings. Having considered the parties' arguments and submissions, and for the reasons stated below, the court grants Defendants' motion to dismiss, and denies their motions for sanctions and a protective order.

FACTUAL BACKGROUND

Plaintiff Lawrence Moore, in the words of the Ninth Circuit, is "no stranger to this court." Moore v. Local 569 of the IBEW, 989 F.2d 1534, 1537 (9th Cir. 1993), cert. denied, __U.S.__, 114 S.Ct. 1006 (1994). Because this case is factually intertwined with at least four others, it is necessary to set out the history of Mr. Moore's litigation in this district in some detail.

In 1985 in Civil Case No. 85-1719-B ("Moore I"), Moore sued the International Brotherhood of Electrical Workers ("IBEW" or "International"), Local 569 and sixteen other defendants for, among other things, violations of the Labor Management Relations Act of 1947 ("LMRA"), as amended 29 U.S.C. § 141 et seq. The district court, Honorable Rudi M.

Brewster presiding, granted summary judgment in favor of the International on certain issues, a directed verdict in favor of the International on other issues, and a directed verdict in favor of Local 569 and certain individual defendants on still other issues. After a 32 day trial, a jury returned a verdict on the remaining issues in favor of Moore against Local 569 and certain of its officers.

With the exception of the prevailing individual defendants, all of the parties appealed: Moore appealed the district court's entry of summary judgment and directed verdicts against him; Local 569 and its officers appealed the district court's motion for judgment NOV; and the International appealed the district court's denial of its motion for sanctions against Moore. Local 569 posted a supersedeas bond for approximately $70,000 as security for the judgment against it.

Meanwhile Moore was proceeding with a second action for, among other things, violations of the LMRA and LMRDA against the International, Local 569, and sixteen other defendants including Moore's former employer, Fischbach & Moore, Inc. ("Fischbach"). In that action, civil case no. 87-0172-B ("Moore II"), the district court, Honorable Rudi M. Brewster presiding, once again dismissed certain claims and granted judgment as a matter of law against Moore on other claims, and Moore once again received a jury verdict against Local 569 on the remaining claims. Both Moore and Local 569 appealed, and Local 569 posted a second supersedeas bond.

After the verdict in Moore II, Fischbach, who had prevailed on a motion to dismiss the claims against it, moved for an award of attorneys' fees against Moore pursuant to a fee-shifting provision in the parties' collective bargaining agreement. Moore argued that the fee-shifting provision, § 1.06 of a contract known as the "Inside Agreement," was the product of collusion, and improperly restricted his right to sue. After ruling that § 1.06 was valid and applicable to Moore, the district court referred the matter to an arbitration panel, which awarded Fischbach approximately $244,000 in fees. On Fischbach's petition, the court confirmed the award and entered judgment accordingly. Moore appealed.

While both appeals in Moore II were pending the Ninth

Circuit issued its decision in Moore I, 989 F.2d at 1546. Before Moore could obtain release of Local 569's supersedeas bond, however, Fischbach filed a lien against it. Soon thereafter, Local 569 won an award of approximately $16,000 for costs on appeal in Moore I, and it too made a claim against the bond. After a December 15, 1993 hearing on the bond's disbursement, the district court ruled that Local 569's claim of offset was valid, and that other creditors had claims to the bond's proceeds, and that Fischbach was entitled to a lien on the remainder. In a now familiar leitmotif, Moore appealed.

In another action, Civil Case No. 91-1543-B ("Moore III"), Moore sued the International, Local 569, Fischbach, and thirty-three other defendants for, among other things, violations of the LMRA and LMRDA. After the court required him to post a $200,000 bond to prosecute the action, Moore petitioned the court for an order of dismissal so he could appeal. The court granted his request by Order of December 21, 1992.

Moore filed the instant action on December 7, 1993 against the International, Local 569, Fischbach, and the San Diego National Electrical Contractors Association ("NECA"), an employer's group, along with individual officers of those organizations. The gravamen of his complaint was that the union and employer defendants colluded to include § 1.06 in the Inside Agreement, then illegally conspired to use that provision to obtain the award of attorneys' fees against Moore in Moore II. In an oral ruling on May 9, 1994, incorporated by reference into its May 17 Order, this court held that because Moore argued or could have argued these theories in Moore II, in which the validity of § 1.06 and the propriety of its application to Moore were litigated, his claims were barred by the doctrine of res judicata. The court, therefore, dismissed the action with prejudice, and Moore appealed.

Finally, in 1994 Moore sued Judge Brewster, Judge Brewster's law clerk, the Clerk of the Court for the Southern District of California, and lawyers from the firms of Levy, Goldman & Levy, which represented Local 569, and Hillyer & Irwin, which represented Fischbach. In that action, Civil Case No. 94-02-R ("Moore V"), Moore alleged that Judge Brewster orchestrated an illegal conspiracy to deprive him of his judgment

in Moore I by denying him access to the proceeds of Local 569's supersedeas bond. By Orders of June 2 and July 25, 1994, the district court granted summary judgment in favor of all defendants; Moore's appeals of those Orders are pending.

The instant action was resurrected in May 1995 when the Ninth circuit struck § 1.06 of the Inside Agreement as applied to Moore, and vacated the award of attorneys' fees to Fischbach In Moore II. See Moore v. Local 569 of the IBEW, 53 F.3d 1054 (1995). Because it overturned the portion of Moore II concerning § 1.06 - the basis for the court's dismissal of the instant action on res judicata grounds - the Ninth Circuit concurrently reversed this court's dismissal order. (Mem. Op at 5.)

After this court granted him permission by Order of July 26, 1995 Moore filed an amended complaint on August 24, 1995 adding the same lawyer defendants that he sued in Moore V plus several more. His First Amended Complaint states seven causes of action arising out of the inclusion of § 1.06 on the Inside Agreement and its application to him. The essence of Moore's claim is that, through conspiracy and abuses of legal processes, the defendants used § 1.06 to deprive him of his property and to retaliate against him for asserting his legal rights, all of which chilled his right to sue; in short, Moore is suing the defendants for improperly restricting his right to file lawsuits.

Presently before the court is the motion to dismiss the First Amended Complaint for failure to state a claim, motion for sanctions, and motion for a protective order brought by Local 569, Jim Aylsworth, Tom Pridemore, NECA, Ron Cooper, Dave Raspolich, James Fuller, the law firm of Kissane & Cook, Matthew Kissane, and Melissa Cook, and joined in by Jennifer Messersmith, the IBEW, Fischbach, the law firm of Hillyer & Irwin, Norman Allenby, Steven Sayler, and Craig Brown.[1]

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[1] For the sake of simplicity, the court will refer to the moving defendants collectively as follows: the IBEW, Local 569, Tom Pridemore, and Jim Aylsworth shall be the "Union Defendants"; and the law firms of Kissane & Cook and Hillyer & Irwin, Matthew Kissane, Melissa Cook, Norman Allenby, Steven Sayler, Craig Brown and Jennifer Messersmith shall be the "Lawyer Defendants.

Defendants Lewis Levy and the law firm of Levy, Goldman & Levy did not join in the motions.

DISCUSSION

A. Moore's Motion to Recuse Presiding Judge

As a preliminary matter, the court considers Moore's motion to recuse the presiding judge, submitted together with his Opposition.

The motion is founded on Moore's belief in a conspiracy among judges in this district, masterminded by Judge Brewster, to trample on his legal rights. In his Declaration in support of the motion, Moore contends that "it is obvious the Keep is merely a figurehead, and that Brewster still has de facto control over this case despite the fact that he filed an order pretending to recuse himself. (Moore Decl. in Supp. of Rec. at 6-7). Similarly, Moore "believes he can infer [that] the orders filed in [Moore V] ... could not have been written by Judge Rhoades, and that Brewster has actually retained de facto jurisdiction over that case" and "written orders granting summary judgment to himself, Hillyer & Irwin Defendants, and Levy Defendants." (Opp. at 15 n.1.)

Moore further alleges that "Keep ... may have been guided by misguided maternalism, or orders from Brewster patron J.C. Wallace," (Moore Decl. in Supp. of Rec. at 6-7), and that "Keep ...[is an] inherently dishonest manipulator, (Moore Decl. in Supp. of Rec. at 7), whose conduct exhibits "hysteria and irrational hatred," (Opp, at 22).

The court denied Moore's original motion for recusal in its May 17, 1994 Order, and the Ninth Circuit affirmed.(Mem. Op. at 3.) He has merely rehashed his old arguments here, punctuated by epithets and speculative conclusions, none of which supports recusal. See Liteky v. U.S., U.S., 114 S.Ct. 1147, 1157 (1994). Moore's motion is denied.

B. Motion to Dismiss

Next, the court turns to Defendants' motion to dismiss the first Amended Complaint for failure to state a claim on which relief can be granted. Defendants raise numerous grounds for dismissal, but the court need consider only one: that the action is barred by the doctrine of res judicata.

1. Standard for Motion to Dismiss

Under Federal Rule of Civil Procedure 12(b)(6), a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff could prove no set of facts in support of his or her claim for relief. Church of Scientology v. Flynn, 744 F.2d 694, 696 (9th Cir. 1984). In applying this standard the court must treat all of plaintiff's factual allegations as true. Experimental Eng'g, Inc. v. United Technologies Corp., 614 F.2d 1244, 1245 (9th cir. 1980). However, the court is not bound to assume the truth of legal conclusions simply because they are stated in the form of factual allegations. Western Mining Counsel v. Watt, 643 F.2d 618, 624 (9th Cir.), cert. denied, 454 U.S. 1031 (1981). To dismiss with prejudice, it must appear to a certainty that the plaintiff would not be entitled to relief under any set of facts that could be proven. Reddy v. Litton Indus., 912 F.2d 291, 293 (9th Cir. 1990), cert. denied, _U.S.__, 112 S.Ct. 332 (1991).

2. Res Judicata

Defendants argue at length that Moore 11 bars the instant action. They acknowledge, of course, that the Ninth Circuit reversed the court's previous dismissal of the action on that ground when it reversed Moore II's award of attorney's fees. Nevertheless, Defendants maintain that the elements of res judicata are satisfied, and urge the court to reinstate its prior ruling. Alternatively, Defendants argue that the action is barred by the res judicata effect of Moore III.

"The doctrine of res judicata bars "all grounds for recovery which could have been asserted, whether they were or not, in a prior suit between the same parties ... on the same cause of action, if the prior suit concluded in a final judgment on the merits." International Union v. Karr, 994 F.2d 1426, 1429 (9th Cir. 1993) (quoting Ross v. Int'l Bhd. of Elec. Workers, 634 F.2d 453, 457 (9th Cir. 1980))(alteration in original). To bar a later suit, therefore, "an adjudication must (1) involve the same 'claim' as the later suit, (2) have reached a final judgment on the merits, and (3) involve the same parties or their privies." Nordhorn v. Ladish Co., Inc., 9 F.3d 1402, 1404 (9th Cir. 1993).

The court need not decide whether Moore II, in its current

procedural posture, satisfies these criteria, because Moore III does so unequivocally. In Moore III, Moore moved to amend his complaint to include allegations nearly identical to those at the heart of the instant case. His proposed Second Amended Complaint included the following language:

> 155. Within the last six months Defendant FISCHBACH made Plaintiff aware of Inside Agreement § 1.06, which was designed and implemented by Defendants LOCAL, NECA, PRIDEMORE, HEISLER, SMITH, ALTMEYER, LUFEN, ZWART, SOUTHLAND ELECTRIC INC, COOPER, FULLER, and FULLER ELECTRIC INC to limit a right to sue.
>
> 156. Defendant FISCHBACH, encouraged by Defendants NECA and COOPER, have [sic] applied Inside Agreement § 1.06 to limit Plaintiff's right to sue in Case No. 87-0172-B(M).
>
> . . .
>
> 169. Defendants LOCAL, PRIDEMORE, HEISLER, SMITH, ALTMEYER, NECA, LUFEN, COOPER, ZWART, SOUTHLAND ELECTRIC INC, FULLER, FULLER ELECTRIC INC, and FISCHBACH negotiated, implemented, financed, encouraged, or participated in limiting the right of Plaintiff to institute actions in court through Inside Agreement § 1.06.
>
> . . .
>
> 204. On August 23, 1988 Defendants SMITH, ALTMEYER and LOCAL caused § 1.06 to be entered into the Inside Agreement.
>
> 205. Section 1.06 was deliberately designed to limit Plaintiff's right to institute actions in court or before an administrative agency as guaranteed by LMRDA § 101(a)(4).
>
> 206. On June 1, 1991 Defendants PRIDEMORE, HEISLER, and LOCAL caused § 1.06 to be entered into the Inside Agreement.
>
> 207. By causing § 1.06 to be entered into the

> Inside Agreement Defendants Breached the IBEW constitution, which is a contract between labor unions.
> (Defs.' Lodg. in Supp. of Mot. ("Defs.'Lodg.") Ex.G.).

The court in MOORE III found the allegations meritless and granted the defendants' motion to dismiss them from the Second Amended Complaint, ruling as follows:

> Plaintiff would also like to attack the validity of § 1.06 of the Inside Agreement. If the claim was or should have been adjudicated in a prior lawsuit, the claim is res judicata in this suit. The plaintiff in this action is also the plaintiff in Case No. 87-0172. In that case plaintiff unsuccessfully brought suit against Fischbach & Moore. This court held that § 1.06 entitles the prevailing party, Fischbach & Moore to an award of fees. Plaintiff cannot now attack the validity of § 1.06.

(Defs.'Lodg. Ex.1 (citation omitted).)

This ruling precludes Moore from bringing the instant action. All of the Union Defendants in the instant action were parties to MOORE III. Although the Lawyer Defendants in the instant action were not, they are sued herein only for their conduct as representatives of the Union and Employer Defendants. Most significantly, every cause of action in the instant case arises out of the allegedly improper inclusion of § 1.06 in the Inside Agreement and its application against Moore - the very things that Moore was prohibited from challenging in Moore III. The Ninth Circuit has held that "whether the two suits arise out of the same transactional nucleus of facts" is the most important criterion in applying the res judicata doctrine. Karr, 994 F.2d at 1429 (quoting Constantini v. Trans World Airlines, 681 F.2d 1191, 1201-02 (9th Cir.), cert. denied, 459 U.S. 1087 (1982)).

The court is aware that the decision in Moore III rests on the award of fees in Moore II, since reversed, and therefore may be considered suspect. The case law is abundently clear, however, that for res judicata purposes, such considerations are irrelevant. The Supreme Court has emphasized that res judicata consequences of a final, unappealed judgment on the merits are

not

> altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case. As this Court explained in Baltimore S.S. Co. v. Phillips, 274 U.S. 316, 325, 47 S.Ct. 600, 604, 71 L.Ed. 1069 (1927), an "erroneous conclusion" reached by the court in the first suit does not deprive the defendants in the second action "of their right to rely upon the plea of res judicata .... A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause [of action].

Federated Dept. Stores, Inc. v. Moitie, 452 U.S. 394 (1981) (citations omitted) (alterations in original). Moore, therefore may have his day in court on his claims relating to § 1.06 through direct review of the ruling in Moore III or not at all. What he categorically may not do is subvert that ruling by means of another lawsuit. Because he is attempting to do exactly that, the court grants Defendants' motion to dismiss the First Amended Complaint in its entirety.

C. Motions for Sanctions and a Protective Order

At the May 9, 1994 hearing on the original motion to dismiss this action, the court admonished Moore for his increasingly flagrant attacks directed at defendants and the court:

> I also want to stress on the record that, based upon a review of this case, the papers that were filed before me, and the files that I was asked to take judicial notice of or had to take judicial notice of in order to ... rule on this particular motion, it is clear that Mr. Moore's conduct is really nearing the egregious level whereby bonds and Rule 11 sanctions have to be imposed.
>
> I make these statements on the record because I want to inform Mr. Moore on the record that his conduct is approaching a sanctionable level so that

there is no question that he had fair warning in case such awards are ever imposed in the future.

(Defs.' Lodg.Ex.J.) Thus, Moore was put on notice that he stood at the threshold of sanctions.

The court cannot say that, by filing his First Amended Complaint after the Ninth Circuit's ruling, he has crossed that threshold. Neither has he retreated from it however, as his recent conduct continues to manifest contempt for Defendants, the judicial process, and judicial personnel. His incessant motions for recusal, already ruled upon, reveal his disdain for judicial decisions. His wild conspiracy theories, frequent references to "judge" in quotation marks, and repeated accusations of bias amount to derision of the judiciary.[2]

Recently the court was compelled to renew its bar against Moore's contacting chambers by telephone because he "behaved abusively and in an intimidating fashion toward chambers staff and the Clerk of the Court's Office," and because of his "propensity for threatening judicial staff with lawsuits ...." (Order of August 30, 1995 at 5.)

Unquestionably Moore is entitled zealously to defend his legal rights. He is not entitled, however, vexatiously to multiply litigation against the defendants in his numerous lawsuits, or to continue to heap scorn on the judiciary with impunity. As the court has previously noted, Moore is an exceptionally experienced litigant, with a demonstrated ability to grasp even complicated legal concepts. While the court declines to sanction him at this time, therefore, it admonishes him again: Moore's abusive behavior toward Defendants and his contempt for the court continue to hover near the level where sanctions will be called for; Moore is well capable of appreciating the borderline between vigilance and vexatiousness, and he is strongly advised

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[2] In but one example of Moore's invectives, he describes the court's ruling on disbursement of the bond in Moore I this way: "Jackals pounced from every direction upon smelling Brewster's stench of bias, partiality and dishonesty, and after the December 15, 1993 hearing he disbursed all of my registry funds to everyone who filed requests regardless of overt abuses of the law and facts. (Moore Decl. in Opp. to Mot. at 8.)

to honor it.

CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that Defendants' motion to dismiss the First Amended Complaint is GRANTED, and the First Amended Complaint is dismissed against them with prejudice. IT IS FURTHER ORDERED that Defendants' motions for sanctions and a protective order are DENIED.

IT IS SO ORDERED.

Filed: FEB 28 1996 Judith N. Keep
Chief Judge
U.S. District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 93-1857-M

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

Defendants Levy, Goldman & Levy, and Lewis Levy ("Levy Defendants") move to dismiss Plaintiff Lawrence Moore's First Amended Complaint. this action is the fourth in a series of five related lawsuits filed by Moore. The original Complaint in this action was filed on December 7, 1993, and was dismissed on res judicata grounds by Chief Judge Judith Keep on May 17, 1994. The Court held that Moore could have litigated these claims in Case No. 87-0172. The Ninth Circuit vacated that dismissal in an unpublished opinion on May 8, 1995, when it reversed the decision in one of the related cases. See Moore v. Local 569 of the IBEW, 53 F.3d 1054 (1995). The Ninth Circuit did not address the res judicata ruling in this action. Moore filed a First Amended Complaint in this action on August 24, 1995, which has been dismissed pursuant to chief Judge Keep's February 27, 1996 order as to all defendants except the Levy defendants, who had not joined in the motion. Moore alleges the Levy defendants conspired to deny him access to court registry funds which were deposited pursuant to a supersedeas bond relating to appeals in a former action by Moore.

Plaintiff Lawrence Moore is an electrician and a thirty-five year member of International Brotherhood of Electrical Workers (IBEW) Local 569. In 1985 he filed suit against the IBEW, Local 569, and sixteen other defendants alleging violations of the Labor Management Relations Act of 1947 ("LMRA")[1], and the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA")[2]. After a 32-day trial, a jury returned a verdict in

[1] 29 U.S.C. § 141 et seq.

[2] 29 U.S.C. § 401 et seq.

favor of Moore against Local 569 and certain of its officers. Local 569 posted a $70,000 supersedeas bond as security for the judgment pending appeal to the Ninth Circuit.

While that appeal was pending Moore proceeded to trial in a related matter in district court and received another jury verdict against Local 569 based on similar claims. Local 569 once again posted a bond and appealed the verdict, along with Moore and others who appealed the dismissal of various parties and claims. The Levy defendants were the lawyer and law firm representing the IBEW Local 569 in both actions. The Ninth Circuit upheld the jury verdict, but before the bonds were released offsets for attorneys' fees granted to prevailing parties on Moore's appeals were taken against the bonds, leaving nothing for Moore.[3] The present action alleges that the Levy defendants conspired to deny him access to the proceeds of the bonds.

A comparison of the First Amended Complaint filed in this action and the issues Moore litigated in the third of his five related actions, Case No. 91-1543, show they contain nearly identical allegations. In Case No. 91-1543 Moore sued the IBEW, Local 569 and thirty-four other defendants, alleging violations of the LMRA and LMRDA. Moore moved for leave to amend his Complaint to add allegations that the fee-shifting provision in his collective bargaining agreement, which has become known as § 1.06 of the inside agreement, was designed and implemented by 12 of the defendants as an impermissible limitation on his right to sue. Additionally, in his fifth action, S.D.Cal. No. 94-02-R Moore sued the trial judge and others, including the Levy defendants, alleging the depravation (sic) of his rights in connection with depriving him of his judgment through the various attorneys' fees and costs that were deducted. Judge Rhodes granted the Levy defendants' motion for summary judgment on June 2, 1994 based, inter alia, on the res judicata effect of Moore's prior case.

In the instant action, the Levy defendants are sued for their conduct as representatives of the IBEW Local 569, alleging

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[3] Moore's prior attorney also had an attorney's lien on the fund. There was also an unrelated creditor's claim that had attached as a lien to the bond proceeds.

improper inclusion of § 1.06 in the inside agreement, and its subsequent application to Moore. Moore alleges that through the conspiracy and abuse of legal processes, the defendants used § 1.06 to deprive him of his rights to the posted bond, and to retaliate against him for asserting his legal rights, all of which improperly restricted his right to sue. On February 27, 1996 Chief Judge Keep dismissed Moore's complaint against all the defendants except the present moving parties who had not joined the motion before her. Judge Keep held that Moore's claims were barred by principles of res judicata. This Court too finds that Moore is precluded under the doctrine of res judicata from attacking the validity of § 1.06 of the inside agreement in the present action because he had the opportunity to present the same claims in Civil Case No. 91-1543. Although the Levy defendants were not parties to that action, they were representing parties thereto. Thus, the requirements of substantial identity of the parties and representation are satisfied. See Bates v. Jones, 904 F.Supp. 1080, 1089 (N.D.Cal.1995); French v. Richell, 40 Cal.2d 477, 481 (1953). Also, when two suits arise out of the same transcribed nucleus of facts the doctrine of res judicata applies. International Union v. Karr, 994 F.2d 1426, 1429 (9th Cir. 1993). Thus, Moore was required to litigate his present claims on a direct appeal of Case No. 91-1543. Judge Rhodes also held in Civil No. 94-02-R that these claims were barred by the res judicata effect of Moore's first case.

Although the Ninth Circuit previously vacated a similar finding of dismissal based on res judicata in the present action, that reversal was not based on an improper finding of res judicata by Chief Judge Keep, but rather that the district court erred in applying § 1.06. The doctrine of res judicata still applies in the present case. A judgment that is voidable because it is based on an erroneous view of the law in not open to collateral attack, and can only be corrected by direct review, and not by bringing another action based on the same cause of action. Federated Dept. Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981). Because Moore has had the opportunity to attack the Court's decision regarding his claims of conspiracy to include § 1.06 of the inside agreement through direct review of Civil Case No. 91-1543, he will not be allowed to collaterally attack it again in this action.

Additionally, because Moore's claims have also been decided against him in Civ. No. 94-02-R, he is further barred from proceeding here based on principles of res judicata.

Defendant Levy, Goldman & Levy and Lewis Levy's motion to dismiss Plaintiff's First Amended Complaint is GRANTED because Plaintiff has previously litigated substantially the same allegations in Civil Cases Nos. 91-1543 and 94-02. Plaintiff's First Amended Complaint is hereby DISMISSED with prejudice.

IT IS SO ORDERED.

FILED: JULY 24, 1996 Barry Ted Moskowitz
U.S. DISTRICT JUDGE

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 96-56248
D.C. No. CV-93-1857-M

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Barry T. Moskowitz, District Judge, Presiding

Filed: February 13, 1998**

Before: PREGERSON, CANBY, and LEAVY, Circuit Judges

Lawrence Moore appeals pro se the district court's dismissal of his action on res judicata grounds and the district court's order requiring him to post a $500 appeal bond. We have jurisdiction pursuant to 28 U.S.C. 1291. We review the dismissal de novo, see Palomar Mobilehome Park Ass'n v. City of San Marcos, 989 F.2d 362, 363 (9th Cir. 1993), and the appeal bond for an abuse of discretion, see Fed.R.App.P. 7. We affirm.

Moore contends that the district court erred by dismissing his action on res judicata grounds. We disagree.

The doctrine of res judicata bars a subsequent action between the dame parties on all claims that were, or could have been, raised in a previous action which led to a final judgment on the merits. See FDIC v. Alshuler (In re Imperial Corp. of Am., 92 F.3d 1503, 1506 (9th Cir. 1996). Here, Moore's claims either

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir.R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a); 9th Cir.R. 34-4. Accordingly, appellant's request for oral argument is denied.

were or could have been raised in Moore v. Local 569 of the Int'l Bhd. of Elec. Workers, No. CV-91-1543-B (S.D.Cal. Dec. 22, 1992), appeal dismissed, No. 93-55287, 1994 WL 283957 (9th Cir. June 27, 1994), and there was a final judgment on the merits, cf. Pension Trust Fund for Operating Eng'rs v. Triple A Machine Shop, Inc., 942 F.2d 1457, 1482 (9th Cir. 1991). Accordingly, the district court properly dismissed Moore's action on res judicata grounds. See Palomar Mobilehome Park Ass'n, 989 F.2d at 363.

Moore contends that the district court erred by requiring him to post a $500 appeal bond pursuant to Fed.R.App.P. 7. We disagree. The determination of the amount of a bond necessary to ensure payment of costs in appeal is left to the discretion of the district court, see Fed.R App.P. 7, and we are unable to find an abuse of discretion.

AFFIRMED[1/]

[1/] Appellant's Motion to strike the brief filed by Ray Van de Nat and to impose sanctions is denied.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case No. 96-1736-G

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS, DENYING DEFENDANTS' MOTION FOR A MORE DEFINITE STATEMENT AND FOR SUMMARY JUDGMENT AS MOOT, DENYING DEFENDANTS' MOTION FOR SANCTIONS AND FOR AN INJUNCTION, AND VACATING FEDERAL DEFENDANTS' MOTION FOR HEARING DATE

BACKGROUND

Plaintiff Lawrence Moore brings claims under the Fifth and Fourteenth Amendments of the U.S. Constitution as well as state law claims for civil conspiracy, fraud, and intentional infliction of emotional distress. Plaintiff seeks declaratory and injunctive relief and compensatory and punitive damages.

Plaintiff was a litigant in several civil actions presided over by two of the defendants in this case, District Court Judges Judith Keep and Rudi Brewster - civil cases nos. 85-1719-B, 87-0172-B 91-1543-B, and 93-1857-K. Two other defendants in this case - Roberta Westdal (Westdal) and Daryl Chang (Chang) - are court personnel. The remaining defendants - Steven Sayler (Sayler), Hillyer & Irwin (H&I), Fischbach & Moore (F&M), Matthew Kissane (Kissane), Melissa Cook (Cook), Kissane & Cook (K&C), and the three "Trust Defendants" (San Diego Electrical Pension Trust, San Diego Electrical Health & Welfare Trust, and San Diego Electrical Training Trust) were either opposing parties or the lawyers of opposing parties in the prior lawsuits.

The essence of plaintiff's present complaint is that he has been deprived of due process by judges, judicial personnel, opposing parties and opposing parties' lawyers, through execution of judgment liens against the proceeds of the jury verdicts and bond monies posted in the prior cases.

Plaintiff, an electrician, once worked for F&M, a defense contractor, where he was represented by Local 569 of the International Brotherhood of Electrical Workers (Local 569).

In 1985 plaintiff brought an action against Local 569 (case no. 85-1719-B), in which a jury found for plaintiff, awarding him over $66,000.00 in damages. Local 569 appealed and posted a supersedeas bond of $70,000.00 to stay the execution of the judgment. In 1993 the Ninth Circuit affirmed the judgment for plaintiff in Moore v. Local 569 of the IBEW, 989 F.2d 1534, 1544-66 (9th Cir. 1993), cert. denied, 510 U.S. 1117 (Moore I).

In 1987 plaintiff brought an action against Local 569, F&M and others (case no. 87-0172-B). Judge Brewster approved an arbitration award for F&M of over $244,000.00 in attorney's fees under the fee-shifting provisions in the collective bargaining agreement (CBA).[1]

Shortly after the Ninth Circuit affirmed the $66,000 judgment for plaintiff in Moore I, plaintiff moved for release of the proceeds of the $70,000 bond posted by Local 569. However, in case no. 85-1719-B several of plaintiff's judgment creditors filed claims against the bond. On November 1, 1993 a bond disposition hearing was held in case nos. 85-1719-B and 87-0172-B, to determine the validity of a lien F&M had filed to secure its attorney's fees award in case no. 87-0172-B. On December 15, 1993 Judge Brewster ordered that $45,000 of the bond amount be distributed to F&M to satisfy its fee awards and granted Local 569 an offset of $14,656.99.[2]

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[1] -In 1995 the Ninth Circuit reversed, holding that the fee-shifting provision violated the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. § 411(a)(4), Moore v. Local 569 of the IBEW, 53 F.3d 1054 (9th Cir. 1995), cert. denied, 116 S.Ct. 908 (1996) (Moore II).

[2] On January 13, 1994 plaintiff appealed Judge Brewster's December 15, 1993 Order. In 1995 the Ninth Circuit affirmed in part and reversed in part, holding that Judge Brewster had jurisdiction over the distribution of the bond proceeds, and that the offset for Local 569 was proper, but that the distribution to F&M was improper in light of the Ninth Circuit's ruling in Moore II that the fee award to F&M violated the LMRDA. Moore v. Local 569 of the IBEW, 53 F.3d 339 (9th Cir. 1995) (Moore III).

In 1991 plaintiff brought an action (case no. 91-1543-B) against Local 569 and the Trust Defendants. Judge Brewster dismissed plaintiff's second amended complaint. Plaintiff appealed to the Ninth Circuit. The Ninth Circuit dismissed the appeal for lack of jurisdiction and awarded attorney's fees to the Trust Defendants. After an October 3, 1994 hearing to determine the reasonableness of the attorney's fees incurred by the Trust Defendants, Judge Brewster awarded the Trust Defendants the sum of $46,429.75. (Defendants' Exhibit A). Following entry of judgment in case no. 91-1543-B, the Trust Defendants obtained a Writ of Execution and filed Notices of Levy against the proceeds of judgments that had been entered in favor of plaintiff in case nos. 85-1719-B and 87-0172-B. (Defendants Exhibits B, C and D).

In 1993 plaintiff filed an action against the National Electrical Contractors Association (NECA), Local 569, and F&M (case no. 93-1857-K). Judge Keep granted the defendants' motion to dismiss on the basis of res judicata and collateral estoppel.

Judge Keep ordered plaintiff to post a cost bond in the amount of $500.00 to secure the defendants' costs on appeal. The Ninth Circuit reversed solely on the basis that it had held in Moore II that the attorney's fees clause in the CBA was illegal and unenforceable. The case was remanded to the district court.[3] Plaintiff then applied for a release of the proceeds of the cost bond. Trust Defendants opposed release on the grounds that their judgment for attorney's fees in case no. 91-1543-B had not been satisfied. On August 30, 1995 Judge Keep ordered that release of the cost bond funds be stayed. (Defendants' Exhibit F). On November 17, 1995 plaintiff appealed Judge Keep's disbursement order. (Notice of Appeal No. 95-56701, Defendants' Exhibit H).

On November 14, 1996 the Trust Defendants and F&M entered into a Stipulation which provided that in the even that the judgment in case no. 87-0172-B was reversed on appeal, F&M would pay any proceeds of said judgment to the Trust

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[3] On remand Judge Keep dismissed plaintiff's amended complaint on the basis of res judicata and collateral estoppel.

Defendants up to the amount necessary to satisfy the Trust Defendants' judgment in case no. 91-1543-B. (Defendants' Exhibit I). When, in Moore II, the Ninth Circuit reversed the judgment in favor of F&M, F&M paid the Trust Defendants the amount of $51,072.73 ($46,429.75 plus 10% annual interest) under the terms of the Stipulation. After an April 29, 1996 hearing in case no. 87-0172-B Judge Brewster affirmed that disbursement to Trust Defendants. (Defendants' Exhibit J). On May 24, 1996 plaintiff appealed the Court's April 29, 1996 disbursement Order. (Notice of Appeal No. 96-55980, Defendants' Exhibit K).

In his current complaint plaintiff alleges the following claims:

(1) due process violations by all defendants with respect to the $500.00 plaintiff posted for appeal costs in case no. 93-1857-K;

(2) due process violations by defendants Brewster, Sayler, H&I, F&M, Kissane, Cook, K&C, and the Trust Defendants with respect to the $51,072.73 amount received by the Trust defendants for attorney's fees in case no. 91-1543;

(3) due process violations by defendants Brewster and Westdal which deprived plaintiff of $140,003.01 as a result of judgment in case no. 87-0172-B;

(4) due process violations by defendants Keep, Brewster and Westdal which deprived plaintiff of posted bonds totaling over $211,000.00 in case nos. 87-0172-B, 91-1543-B, and 93-1857-K; and

(5) civil conspiracy, fraud, and intentional infliction of emotional distress by all defendants.

Defendants - Kissane, Cook, K&C, the Trust Defendants, Sayler, H&I, and F&M - now move to dismiss plaintiff's complaint, under Fed.R.Civ.P. 12(b)(6) for failure to state claims upon which relief can be granted. Defendants Sayler, H&I, and F&M move in the alternative for summary judgment. All moving defendants also seek sanctions under Fed.R.Civ.P. 11 and an injunction. Plaintiff filed an opposition to these motions on January 21, 1997 and has also submitted declarations in support of his opposition.

DISCUSSION

A Judicial Notice

At the outset the Court notes that the parties have submitted documents and referred to matters outside the pleadings. Rule 12(b) states that if matters outside the pleadings are presented and not excluded by the court on a motion to dismiss, the motion shall be treated as one for summary judgment and disposed of in accordance with Rule 56. Fed.R.Civ.P. 12(b). However, on a motion to dismiss a court may look beyond the pleadings to matters of public record without converting the motion into one for summary judgment. Mack v. South Bay Beer Distributors, Inc., 789 F.2d 1279, 1282 (9th Cir. 1986).

Judicial notice may be taken of those facts that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be challenged. See Fed.R.Evid. 201(b). Therefore, the Court takes judicial notice only of the pleadings and orders filed in district court cases nos. 85-1719-B, 87-0172-B, 91-1543-B, and 93-1857-K. This Court also takes judicial notice of the pleadings and orders filed in the appeals to the Ninth Circuit.

B. Plaintiff's Claims against the Federal Defendants

Before addressing the claims brought by the moving defendants, the Court examines whether any claims exist against Judge Keep, Judge Brewster, Westdal, and Chang under the doctrine of judicial immunity.

1. Judges Keep and Brewster

A judge is generally immune from a civil action for damages. Mirales v. Waco, 502 U.S. 9 (1991). "The judicial or quasi-judicial immunity available to federal officers is not limited to immunity from damages, but extends to actions for declaratory, injunctive and other equitable relief." Mullis v. U.S. Bankruptcy Court for Dist. of Nevada, 828 F.2d 1385, 1394 (9th Cir. 1987), cert. denied 486 U.S. 1040 (1988).

Plaintiff's allegations of legal error do not deprive Judges Keep and Brewster of judicial immunity. Judicial immunity applies "however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff." Cleavinger v. Saxner, 474 U.S. 193, 199-200 (1985). Nor is judicial immunity lost by allegations that a judge

conspired with one party to rule against another party: "a conspiracy between a judge and [a party] to predetermine the outcome of a judicial proceeding, while clearly improper, nevertheless does not pierce the immunity extended to judges." Ashelman v. Pope, 793 F.2d 1072, 1078 (9th Cir. 1986).

While the doctrine of judicial immunity knows two limits, neither applies to Judges Keep or Brewster. First, a judge "will be subject to liability ... when he has acted in the clear absence of all jurisdiction." Stump v. Sparkman, 435 U.S. 349, 356-57 (1978). Judges Keep and Brewster were acting well within their jurisdiction when they ordered the posting of bonds and the disbursement of funds awarded in civil case nos. 87-0172-B and 93-1857-K. Second, only judicial acts are protected. Stump, 435 U.S. at 360. Judges Keep and Brewster's decisions with respect to the posting of bonds and distribution of jury verdict awards are functions normally performed by a judge.

This Court finds that Judges Brewster and Keep are absolutely immune from plaintiff's claims for actions taken by them in their official capacity as judges in plaintiff's prior cases. Bradley v. Fisher, 80 U.S. 335 (1871); Stump, 435 U.S. at 362.

2. Westdal and Chang

Defendant Westdal, while acting as Clerk of the United States District Court for the Southern District of California, performs quasi-judicial functions for which she is entitled to absolute immunity. Mullis, 828 F.2d at 1390; Sharma v. Stevas, 790 F.2d 1486 (9th Cir. 1986); Morrison v. Jones, 607 F.2d 1269, 1273 (9th Cir. 1979, cert. denied, 445 U.S. 962 (1980). Plaintiff brings claims against Westdal for her refusal to release money to plaintiff in August and September of 1995. However, Westdal declined to release the funds because a lien had been filed on these funds and because Judge Keep had stayed the funds' release in case no. 93-1857-K. Thus this Court finds that defendant Westdal's refusal to disburse funds to plaintiff falls within Westdal's quasi-judicial duties and is protected by absolute immunity.

Similarly, defendant Chang, while acting as a law clerk for Judge Keep, enjoyed absolute judicial immunity. "[A] law clerk is probably the one participant in the judicial process whose duties and responsibilities are most intimately connected with the

judge's own exercise of the judicial function." Moore v. Brewster, 96 F.3d 1240, 1245 (9th Cir. 1996). Plaintiff brings claims against Chang for his refusal to instruct Westdal to release funds to plaintiff in august and September of 1995. However, Chang's refusal was due to Judge Keep's stay of disbursement. Thus, this Court finds that defendant Chang was clearly assisting Judge Keep in carrying out her judicial functions.

Plaintiff's claims against these defendants stem entirely from actions taken by them in prior civil cases in their respective roles as judges or as judicial staff. Accordingly, plaintiff's claims against defendants Brewster, Keep, Chang, and Westdal are **DISMISSED, with prejudice**. The motion hearing on the federal defendants' motion to dismiss presently scheduled for February 18, 1997 is hereby **VACATED**.

C. Dismissal Under Rule 12(b)(6)

This Court now turns to plaintiff's claims against the remaining defendants. Plaintiff alleges due process violations, civil conspiracy, fraud, and intentional infliction of emotional distress by all remaining defendants - Sayler, H&I, F&M, Kissane, Cook, K&C and the Trust Defendants. The claims relate to the $500.00 bond Judge Keep ordered disbursed to the Trust Defendants in case no. 93-1857-K[4]; and the $51,072.73 amount Judge Brewster ordered disbursed to the Trust Defendants in case no. 93-1857-B[5].

Defendants move to dismiss plaintiff's complaint on the grounds that: (1) plaintiff's due process and civil conspiracy claims are barred by the doctrine of issue preclusion since plaintiff has previously appealed the district court rulings that form the basis of his complaint to the Ninth Circuit; and (2) plaintiff's claims for fraud and intentional infliction of emotional distress fail to state claims upon which relief could be granted.

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[4] Plaintiff appealed Judge Keep's decision to the Ninth Circuit. On February 2, 1996 the Ninth Circuit dismissed plaintiff's appeal because plaintiff had failed to perfect the appeal in accordance with the Federal Rules of Appellate Procedure.

[5] Plaintiff has appealed Judge Brewster's April 29, 1996 Order. This appeal is still pending.

Defendants submit the declaration of Melissa W. Cook in support of their motion to dismiss.

1. Legal Standard

A motion to dismiss under Rule 12(b)(6) for failure to state a claim "is viewed with disfavor and is rarely granted." Hall v. City of Santa Barbara, 833 F.2d 1270, 1274 (9th Cir. 1986). Unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief, a complaint cannot be dismissed for failure to state a claim. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Buckey v. Los Angeles, 957 F.2d 652, 654 (9th Cir. 1992). The court looks not at whether the plaintiff will "ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Sheuer v. Rhodes, 416 U.S. 232, 236 (1974).

When ruling on a motion to dismiss the court must accept all material allegations of fact in the complaint as true and construe those allegations in the light most favorable to the non-movant. North Star Int'l. v. Arizona Corp. Comm'n, 720 F.2d 578, 581 (9th Cir. 1983). However, the court is not bound to assume the truth of legal conclusions simply because they are pleaded in the form of factual allegations. Western Mining Counsel v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). Finally, while the pleading need not allege facts constituting the claim for relief or defense, it must give fair notice of the pleader's claim or defense so that opposing parties can respond, undertake discovery, and prepare for trial. Conley, 355 U.S. at 45-46.

2. Analysis

The Fifth and Fourteenth Amendments protect against wrongful deprivations of life, liberty and property. The Due Process Clause of the Fifth Amendment applies to and restricts only the federal government and not private persons. Public Utilities Comm'n v. Pollak, 343 U.S. 451, 461 (1952). "The standards utilized to find federal action for purposes of the Fifth Amendment are identical to those employed to detect state action subject to the strictures of the Fourteenth Amendment." United States v. Davis, 482 F.2d 893, 897 n.3 (9th Cir. 1973). In order to state a colorable due process claim, therefor, a plaintiff must allege: 1) a wrongful deprivation of life, liberty, or property by

the federal government or state; and 2) inadequate procedures accompanying this deprivation.

Plaintiff attempts to bring due process claims against private individuals involved in his prior lawsuits. "Whether the actual individual who inflicted the injuries acted under color of [federal or] state law is often a threshold question." Van Ort v. Estate of Stanewich, 92 F.3d 831, 835 (9th Cir. 1996).

> Individuals do, indeed, have a right to be free from state violations of the constitutional guarantees to be secure in one's person and home, not to be deprived of life, liberty, or property without due process, and to be free from cruel and unusual punishment. Individuals, however, have no right to be free from the infliction of such harm by private actors.

Van Ort, 92 F.3d at 835 (citing De Shaney v. Winnebago County Dep't of Social Serv., 489 U.S. 189, 196 (1989).

Because the remaining defendants acted as private citizens, plaintiff had no constitutional right to be free from their alleged deprivations of due process. "Generally, there is no constitutional right to governmental aid [from private deprivations of constitutional rights] even where such aid may be necessary to secure life, liberty, or property." DeShaney, 489 U.S. at 196. The fact that these private defendants obtained the money that plaintiff claims is his as a result of judicial proceedings does not transform the defendants into state actors. "[S]tate enforcement of private rights generally will not itself meet the state action requirement." International Olympic Committee v. San Francisco Arts & Athletics, 781 F.2d 733, 737 (9th Cir. 1986), aff'd 483 U.S. 522 (1987).

Because plaintiff cannot allege that the remaining defendants are government actors, plaintiff's due process claims against these remaining defendants must fail. Defendants' motion to dismiss these claims is **GRANTED**. Plaintiff's due process claims against the private defendants are **DISMISSED, with prejudice**.

D. Supplemental Jurisdiction Over Plaintiff's State Law Claims

Plaintiff has brought state law claims against the moving defendants for civil conspiracy, fraud, and intentional infliction of emotional distress. However, this Court declines to exercise supplemental jurisdiction over plaintiff's state law claims, pursuant to 28 U.S.C. § 1367(c)(3), as the Court has dismissed with prejudice all the federal claims originally joined with the state law claims. Accordingly, the defendants' motion to dismiss plaintiff's state law claims is **GRANTED, with prejudice.**

E. Defendants' Motions for a More Definite Statement and for Summary Judgment

Since this Court has granted the defendants' motion to dismiss, defendants' motion for a more definite statement and defendants Sayler, H&I and F&M's alternative motion for summary judgment are **DENIED AS MOOT.**

F. Defendants' Request for Sanctions and an Injunction

1. Rule 11 Sanctions

Defendants move for Rule 11 Sanctions in the amount equivalent to attorney's fees incurred in defending against plaintiff's action.

Rule 11(b) of the Federal Rules of Civil Procedure states that, by presenting a complaint to the court, an attorney is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery ...

A party or its counsel may be held responsible for sanctions pursuant to Rule 11 for an innocent, good-faith mistake of law or for carelessness of counsel. Lloyd v. Schlag, 884 F.2d 409, 412 (9th Cir. 1989). An objective standard of reasonableness is applied to determinations of both frivolousness and improper purpose. Zaldivar v. Ciry of Los Angeles, 780 F.2d 823, 830-31 (9th Cir. 1986).

The Court declines to impose sanctions under Rule 11. The most recent revision of Rule 11 operates under a safe harbor principle. Litigants must be given warning of the opposing party's intention to seek sanctions so that the offending pleading can be withdrawn. If the pleading is withdrawn, then the litigant cannot be sanctioned. To facilitate the safe harbor approach the opposing party is required to give notice of the intent to seek sanctions by serving the motion on the opposing party 21 days before the motion for sanctions is filed with the court.

Furthermore, defendants have made their request for sanctions only in their memorandum of points and authorities in support of their motions to dismiss, or in the alternative, for summary judgment. This does not comply with Rule merits. See FDIC v. Alshuler (In re Imperial Corp. of Am., 92 F.3d 1503, 1506 (9th Cir. 1996). Here, Moore's claims either 11(c)(1)(A), which states that

> A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion or such other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. (Emphasis added.)

The 1993 Advisory Committee Notes add that the motion may not "simply [be] included as an additional prayer for relief contained in another motion." See also Tate v. Lau, 865 F.Supp. 681, 691 (D.Nev. 1994) (applying the separate motion requirement); In re VMS Securities Litigation, 156 F.R.D. 635, 641 (N.D.Ill. 1994) (same).

Because Defendants did not notice their intent to seek sanctions and did not file a separate motion for sanctions, and

given the clear preference for the safe harbor provisions in Rule 11 and the Advisory Committee Notes, the Court **DENIES** the defendants' request for Rule 11 sanctions.

2. Injunction Against Further Filings by Plaintiff Against Moving Defendants

The defendants also request an injunction from repetitive litigation by the plaintiff under 28 U.S.C. § 1651. In DeLong v. Hennessey, 912 F.2d 1144 (9th Cir. 1990), cert. denied 498 U.S. 1001 (1990) the Ninth Circuit announced four factors to be considered when determining the appropriateness of a § 1651 injunction: 1) notice to the plaintiff and an opportunity to oppose the motion; 2) an adequate record for review; 3) substantive findings of frivolousness; and 4) whether such an order is narrowly tailored to address the abuse perceived. DeLong, 912 F.2d at 1147-48.

The DeLong court cautioned that "such pre-filing orders should rarely" be granted since "an order imposing an injunction is an extreme remedy, and should be used only in exigent circumstances" in light of "the general rule of free access to the courts." DeLong, 912 F.2d at 1147. Furthermore, "[t]he use of such measures against a pro se plaintiff should be approached with particular caution." DeLong, 912 F.2d at 1147.

As no substantive findings of frivolousness have been made by the Court, the defendants' motion for an injunction is **DENIED**. **G. Conclusion**

For the reasons set forth above, the complaint is

DISMISSED in its entirety, **with prejudice**. The Court **DENIES** the defendants' motions for Rule 11 sanctions and for an injunction. the motion hearing on the federal defendants' motion to dismiss presently calendared on February 18, 1997 is **VACATED**.

IT IS SO ORDERED.

Filed: FEB 12, 1997 Irma E. Gonzalez
U.S. District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case No. 96-1736-G

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

By Order dated February 14, 1997 the Court granted defendants' motions to dismiss plaintiff's complaint in its entirety. Plaintiff Lawrence Moore has now filed objections to the Order which the Court construes as a motion for reconsideration under Federal Rule of Civil Procedure 59(e).[1]

The facts underlying this action are set forth in detail, together with the Court's reasoning, in the February 14, 1997 Order. In his complaint plaintiff claimed that he had been deprived due process by judges, judicial personnel, opposing parties and opposing parties' lawyers as a result of certain liens. Plaintiff named District Judges Judith Keep and Rudi Brewster, Judge Keep's law clerk, Daryl Chang and Clerk of the Court Roberta Westdal and Steven Sayler, Hillyer & Irwin, Fischbach & Moore, Matthew Kissane, Melissa Cook, Kissane & Cook, San Diego Electrical Pension Trust, San Diego Electrical Health and Welfare Trust and San Diego Electrical Training Trust as defendants.

The Court found that the judges and court personnel defendants were immune from plaintiff's claims under the doctrine of judicial immunity. The Court dismissed plaintiff's due process claims against the remaining defendants because plaintiff alleged no state action.

Motion for Reconsideration

A motion under Rule 59(e) must be filed no later than ten days after entry of the judgment. See Fed.R.Civ.P. 59(c). Judgment in this case was entered on February 18, 1997. Plaintiff filed his motion on February 26, 1997. Accordingly, the plaintiff's motion is timely.

A motion to alter or amend an order under Rule 59(e) essentially seeks "a substantive change of mind by the court." Miller v. Transamerican Press, Inc., 709 F.2d 524, 527 (9th Cir. 1983). Reconsideration under Rule 59(e) is appropriate only if:

(1) plaintiff presents newly discovered evidence; (2) the court committed clear error or the initial decision was manifestly unjust; (3) there is an intervening change in controlling law; or (4) other highly unusual circumstances exist that warrant reconsideration. School Dist. No. 1J, Multnomah County v. ACands, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993), cert. denied 114 S.Ct. 2742 (1994). Under Local Rule 7.1(i) a party bringing a motion for reconsideration must describe "what new or different facts or circumstances are claimed to exist which did not exist, or were not shown, upon such prior application." Local Rule 7.1(i).

Plaintiff has made no attempt to show which if any of the Rule 59(e) factors warrant reconsideration of the Order. Plaintiff alleges that the Court's Order "misrepresents" the factual background of the case and attempts to reargue the merits of his due process claims. Plaintiff has presented no newly discovered evidence. Furthermore, the Court finds: 1) no clear error or manifest injustice; 2) no intervening change in the controlling law; and 3) no highly unusual circumstances warranted reconsideration. School Dist. No. 1J, 5 F.3d at 1263.

Accordingly plaintiff's motion for reconsideration is **DENIED**.

IT IS SO ORDERED.

Filed: MAR 6 1997

Irma E. Gonzalez
U.S. District Judge

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
No. 97-55470
D.C. No. CV-96-1736-G

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, District Judge, Presiding

Filed January 20, 1998**

Lawrence Moore appeals pro se the district court's Fed.R.Civ.P. 12(b)(6) dismissal of his 42 U.S.C. § 1983 action alleging two district judges, the clerk of court, a law clerk, opposing parties and opposing parties' lawyers violated due process rights in executing judgment liens against the proceeds of jury verdicts and bond monies posted in prior cases. Moore also appeals the district court's denial of his Fed.R.Civ.P. 59(e) motion for reconsideration. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

We review de novo the district court's dismissal pursuant to Fed.R.Civ.P. 12(b)(6), see Mullis v. United States Bankruptcy Court, 828 F.2d 1385, 1388 (9th Cir. 1987), and for an abuse of discretion the district court's denial of the motion for reconsideration, see School Dist. No. 1J v. ACands, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993).

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir.R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a); 9th Cir.R. 34-4. Accordingly, we deny appellant's December 11, 1997 request for an extension of time to file a statement of reasons why oral argument should be heard.

The district court properly dismissed Moore's claims against the district judges and court personnel under the doctrine of judicial immunity. See Mullis, 828 F.2d at 1388-90; see also Moore v. Brewster, 96 F.3d 1240, 1244-45 (9th Cir. 1996), cert. denied, 117 S.Ct. 963 (1997).

The district court properly dismissed the claims against the remaining defendants because Moore failed to sufficiently allege that these defendants acted under color of state law. See Van Ort v. Estate of Stanewich, 92 F.3d 831, 835 (9th Cir. 1996), cert. denied, 117 S.Ct. 950 (1997).[1/]

AFFIRMED.

[1/] The district court did not err by denying Moore's motion for reconsideration. See School Dist. No. 1J, 5 F.3d at 1262. Moore does not appeal the district court's dismissal of his state law claims.